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

Case No. 34-2022-00314820

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13 ANDREW D. TAPPIN, DONYEISHA MISH,
DARNELL LEE, LUIS ROBLES, XOCHITL
14 VELASCO, and VICTOR GONZALEZ,
individually, and on behalf of all other
15 similarly situated,

Plaintiffs,

16 v.

17 TFORCE FREIGHT, INC., a Virginia
Corporation; and DOES 1 through 50, inclusive,
18 Defendants.

**STIPULATION OF CLASS AND PAGA
REPRESENTATIVE ACTION
SETTLEMENT**

Consolidated Complaint Filed: June 27, 2022
Trial Date: None Set

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DARNELL LEE, LUIS ROBLES, XOCHITL
26 VELASCO, VICTOR GONZALEZ, and ANDREW D. TAPPIN
27
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1 This Stipulation of Settlement (“Stipulation” or “Settlement”) is made and entered into, as
2 of the date set forth below, between Plaintiffs Donyeisha Mish, Darnell Lee, Luis Robles, Xochitl
3 Velasco, Victor Gonzalez, and Andrew Tappin (“Plaintiffs”), as individuals and as representatives
4 of the proposed Class described herein and, as to Mish, Gonzalez and Tappin, as representatives of
5 the State of California, and Defendant TForce Freight, Inc. (“Defendant”) who are parties to the
6 Action, as defined below (together, the “Parties”).

7 **1. DEFINITIONS**

8 1.1 “Action” collectively means *Mish v. UPS Ground Freight, Inc.*, Northern District
9 of California Case No. 3:21-cv-04094-EMC, consolidated with *Gonzalez v. TForce Freight, Inc.*,
10 Case No. 3:22-cv-01177, and *Tappin v. TForce Freight, Inc.*, Case No. 2:22-cv-00322; *Mish v.*
11 *UPS Ground Freight, Inc.*, Case No. RG21105108 pending in the Superior Court of California,
12 County of Alameda, *Gonzalez v. TForce Freight, Inc.*, Case No. CVRI2105225, pending in the
13 Superior Court of California, County of Riverside; and *Tappin v. TForce Freight, Inc.* Case No.
14 34-2022-00314820 pending in the Superior Court of California, County of Sacramento .

15 1.2 “Class Counsel” means Ronald W. Makarem, Samuel Almon and Daniel J. Bass of
16 Makarem & Associates, APLC (“M&A”); Norman B. Blumenthal, Kyle R. Nordrehaug, Aprajit
17 Bhowmik Nicholas J. De Blouw, Jeffrey S. Herman and Sergio J. Puche of Blumenthal Nordrehaug
18 Bhowmik De Blouw LLP (“BNBD”); and James R. Hawkins, Gregory Mauro, Michael Calvo and
19 Jeanne Sarmiento of James Hawkins APLC (“JH”).

20 1.3 “Class Data” means a confidential spreadsheet that includes, for each Settlement
21 Class Member, their name, last known address, social security number, and number of Eligible
22 Workweeks and Eligible Pay Periods or data sufficient for the Settlement Administrator to
23 determine Eligible Workweeks and Eligible Pay Periods.

24 1.4 “Class Settlement Period” means the time period from September 13, 2016, through
25 the Preliminary Approval Date, subject to section 3.2.2.

26 1.5 “Class Representatives” or “Plaintiffs” means Plaintiffs Donyeisha Mish, Darnell
27 Lee, Luis Robles, Xochitl Velasco, Victor Gonzalez, and Andrew Tappin.
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1 1.6 “Class Representatives’ Released Claims” means any and all claims, obligations,
2 demands, actions, rights, causes of action, and liabilities against the Released Parties, of whatever
3 kind and nature, character, and description, whether in law or equity, whether sounding in tort,
4 contract, federal, state and/or local law, statute, ordinance, regulation, common law, or other source
5 of law or contract, whether known or unknown, and whether anticipated or unanticipated, including
6 all unknown claims covered by California Civil Code Section 1542, by the Class Representative,
7 arising at any time up to and including the date on which the Court enters the Order of Final
8 Approval, for any type of relief, including without limitation claims for wages, premium and other
9 forms of pay, unpaid/unreimbursed costs, penalties (including waiting time penalties), general
10 damages, compensatory damages, liquidated damages, punitive damages, interest, attorneys’ fees,
11 litigation and other costs, expenses, restitution, and equitable and declaratory relief. The Class
12 Representatives’ Released Claims also include, but are not limited to, the Released Claims as well
13 as any other claims under any provision of the Fair Labor Standards Act (“FLSA”), the California
14 Labor Code, including PAGA, any applicable California Industrial Welfare Commission Wage
15 Orders, any city or county Living Wage Ordinances, and claims under state or federal
16 discrimination statutes, including, without limitation, the California Government Code; the Unruh
17 Civil Rights Act, California Civil Code; the California Constitution; the California Business and
18 Professions Code, including but not limited to Sections 17200 *et seq.*; the United States
19 Constitution; the Age Discrimination in Employment Act (“ADEA”) and the Older Workers
20 Benefit Protection Act; the Uniformed Services Employment and Reemployment Rights Act, Title
21 VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq.*; the Civil Rights Act of 1991; the
22 Family and Medical Leave Act, to the extent not prohibited by law; the Americans with Disabilities
23 Act, 42 U.S.C. § 12101 *et seq.*; the Employee Retirement Income Security Act of 1974, 29 U.S.C.
24 § 1001 *et seq.*; the Equal Pay Act; the Fair Credit Reporting Act; the Employee Retirement Income
25 Security Act of 1974; the Worker Adjustment and Retraining Notification Act; the Sarbanes-Oxley
26 Act of 2002; the California Family Rights Act; and all of their implementing regulations and
27 interpretive guidelines; any and all claims for monetary recovery and personal or individual relief,
28 except as prohibited by law; and any premiums, penalties, interest, punitive damages, costs,

1 attorneys' fees, injunctive relief, declaratory relief, or accounting based on any of the foregoing
2 claims. For the avoidance of doubt, this is a complete and general release to the maximum extent
3 by law. Notwithstanding the foregoing, the release of the Class Representatives' Released Claims
4 does not any claim or right that is not waivable as a matter of law.

5 1.7 "Court" means the Superior Court of California, County of Sacramento.

6 1.8 "Defendant's Counsel" means Brian Berry, Sarah Zenewicz, J.P. Schreiber and
7 Ashlee N. Cherry of Morgan, Lewis & Bockius LLP.

8 1.9 "Effective Date" means the date on which the Judgment becomes a Final Judgment.
9 For purposes of this Settlement Agreement, the final judgment "becomes final" only after the Court
10 grants the motion for final approval of the settlement and upon the latter of (i) the period for filing
11 any appeal, writ, or other appellate proceeding challenging or opposing the Settlement has elapsed
12 without any appeal, writ, or other appellate proceeding having been filed; (ii) any appeal, writ or
13 other appellate proceeding challenging or opposing the Settlement has been dismissed finally and
14 conclusively with no right to pursue further remedies or relief; or (iii) any appeal, writ or other
15 appellate proceeding has upheld the Court's final order with no right to pursue further remedies or
16 relief. In this regard, it is the intention of the Parties that the Settlement shall not become effective,
17 and Defendant will not be obligated to fund this Settlement, until the Court's order approving the
18 Settlement is completely final, and there is no further recourse by an appellant, objector, or
19 intervenor who seeks to contest the Settlement.

20 1.10 "Eligible Workweeks" shall mean the workweeks that each Settlement Class
21 Member worked for Defendant in California during the Class Settlement Period, excluding any
22 Settlement Class Member's workweeks covered by a prior release, or in one instance a dismissal
23 with prejudice, of the Released Class Claims in the matters of *Robert Amaya v. United Parcel*
24 *Service, Inc. et al.*, Los Angeles Superior Court Case No. BC617526, *Lawrence Abeyta et al. v.*
25 *United Parcel Service, Inc. et al.*, San Bernardino Superior Court Case No. CIVDS1617272, *Jose*
26 *Alfaro v. United Parcel Service, Inc. et al.*, Los Angeles Superior Court Case No. BC676920,
27 *Patrick Bruins v. United Parcel Service, Inc. et al.*, Ventura County Superior Court Case No. 56-
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1 2018-00510065-CU-OE-VTA, and *Michael Babb v. United Parcel Service, Inc. et al.*, San
2 Bernardino Superior Court Case No. CIVDS1831252.

3 1.11 “Eligible Pay Periods” shall mean the pay periods that each PAGA Member worked
4 for Defendant in California during the PAGA Settlement Period, excluding any PAGA Member’s
5 pay periods covered by a prior release, or in one instance a dismissal with prejudice, of the Released
6 PAGA Claims in the matters of *Robert Amaya v. United Parcel Service, Inc. et al.*, Los Angeles
7 Superior Court Case No. BC617526, *Lawrence Abeyta et al. v. United Parcel Service, Inc. et al.*,
8 San Bernardino Superior Court Case No. CIVDS1617272, *Jose Alfaro v. United Parcel Service,*
9 *Inc. et al.*, Los Angeles Superior Court Case No. BC676920, *Patrick Bruins v. United Parcel*
10 *Service, Inc. et al.*, Ventura County Superior Court Case No. 56-2018-00510065-CU-OE-VTA,
11 and *Michael Babb v. United Parcel Service, Inc. et al.*, San Bernardino Superior Court Case No.
12 CIVDS1831252.

13 1.12 “Enhancement Award” means the amount approved by the Court to be paid to the
14 Class Representatives, in recognition of each of their efforts in coming forward as Class
15 Representatives and as consideration for a full, general, and comprehensive release of the Class
16 Representatives’ Released Claims, which shall be in addition to their portions of the Net Settlement
17 Amount.

18 1.13 “Final Approval Date” means the date on which the Court enters the Order of Final
19 Approval.

20 1.14 “Final Approval Hearing” means a hearing set by the Court, to take place on a date
21 established by the Court, for the purpose of (i) determining the fairness, adequacy, and
22 reasonableness of the Stipulation terms and associated Settlement pursuant to class action
23 procedures and requirements; (ii) determining the amount of the award of attorneys’ fees and costs
24 to Class Counsel; (iii) determining the amounts of the Enhancement Awards to the Class
25 Representatives; and (iv) entering the Judgment.

26 1.15 “Gross Settlement Amount” shall mean the amount that Defendant will pay in
27 settlement of this matter, subject to section 3.2.2 below. The Gross Settlement Amount includes
28 all awards of attorneys’ fees and costs to Class Counsel, Settlement Administration Costs,

1 Enhancement Awards, the PAGA Settlement Payment (paid to the PAGA Members and the
2 LWDA), and payments to the Participating Class Members.

3 1.16 “Individual PAGA Payment” means the individual amounts paid from the PAGA
4 Payment to the individual PAGA Members for settlement of claims for civil penalties under PAGA.

5 1.17 “Individual Settlement Payment” means the settlement amount due each
6 Participating Class Member from the Net Settlement Amount.

7 1.18 “LWDA” means the California Labor and Workforce Development Agency.

8 1.19 “LWDA PAGA Payment” means the payment to the LWDA from the PAGA
9 Payment for settlement of claims for civil penalties under PAGA.

10 1.20 “Net Settlement Amount” is the portion of the Gross Settlement Amount available
11 for distribution to the Participating Class Members, which shall equal the Gross Settlement Amount
12 less PAGA Payment, Court-approved attorneys’ fees and costs award to Class Counsel, Settlement
13 Administration Costs, and the Enhancement Awards.

14 1.21 “Notice of Settlement” means the document provided to Settlement Class Members
15 to notify them of the settlement, a copy of which is attached hereto as **Exhibit 1**.

16 1.22 “PAGA Actions” means *Mish v. TForce Freight, Inc.*, Alameda Superior Court Case
17 No. RG21105108, *Gonzalez v. TForce Freight, Inc.*, Riverside Superior Court Case No.
18 CVRI2105225 and *Tappin v. TForce Freight, Inc.*, Sacramento Case No. 34-2022-00314820.

19 1.23 “PAGA Members” means all current and former California non-exempt employees
20 of Defendant who have worked at least one Eligible Pay Period during the PAGA Settlement
21 Period.

22 1.24 “PAGA Notice” collectively means Plaintiff Mish’s January 19, 2021 letter to
23 Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a);
24 Plaintiff Gonzalez’s August 27, 2021 letter to Defendants and the LWDA providing notice pursuant
25 to Labor Code section 2699.3, subd.(a); and Plaintiff Tappin’s November 24, 2021 letter to
26 Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

1 1.25 “PAGA Payment” means the payment in settlement of all claims for PAGA
2 penalties, 75% of which will be distributed as the LWDA PAGA Payment and 25% of which will
3 be distributed as Individual PAGA Payments to the PAGA Members.

4 1.26 “PAGA Settlement Period” means the period from May 10, 2020, through the
5 Preliminary Approval Date or June 15, 2023, whichever is later, subject to section 3.2.2.

6 1.27 “Participating Class Members” means the Settlement Class Members who do not
7 timely request to be excluded from the class portion of the settlement. No claim form is required
8 for a Settlement Class Member to become a Participating Class Member.

9 1.28 “Preliminary Approval Date” means the date the Court enters the Order preliminary
10 approving the Stipulation of Settlement and setting the Final Approval Hearing.

11 1.29 “Qualified Settlement Fund” means the Qualified Settlement Fund (“QSF”) created
12 under Internal Revenue Code Section 468B, to be overseen by the Settlement Administrator.

13 1.30 “Released Class Claims” means all claims, rights, demands, liabilities, and causes
14 of action, asserted in any of the complaints filed in the Action, and all claims that could have been
15 asserted in the Action reasonably arising from the same alleged facts and theories in the complaints
16 filed in the Action or the PAGA Actions, or alleged in the PAGA Notices sent by the Plaintiffs to
17 the LWDA, under any federal, state and local laws or the IWC Wage Orders, including claims for
18 (1) unpaid minimum wages; (2) unpaid overtime wages; (3) failure to provide meal periods and
19 pay meal period premiums; (4) failure to provide rest periods and pay rest period premiums; (5)
20 failure to provide accurate wage statements; (6) failure to keep accurate records; (7) failure to
21 indemnify for all necessary business expenses; (8) failure to timely pay wages during employment
22 or at termination; (9) failure to pay and accurately calculate all sick pay wages; (10) failure to
23 provide and accurately calculate COVID-19 supplemental sick pay; (11) violations of California
24 Labor Code sections 201-204, 210, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 248.2, 510, 512, 558,
25 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2802 and 2804; (12) unfair competition based on the same
26 Labor Code violations; and (13) all claims for interest, penalties, attorneys’ fees, costs and any
27 other monetary relief based upon the claims described above and including, but not limited to,
28 pursuant to Labor Code §§ 210, 218.5, 218.6, Code of Civil Procedure §1021.5, and/or Civil Code

1 §§ 3287(b) and 3289, costs, attorneys' fees, injunctive relief, declaratory relief, or accounting that
2 are based on or related to the alleged Labor Code, Wage Order, and Business & Professions Code
3 violations, that accrue during the Class Settlement Period. In addition, by cashing their checks
4 containing their respective Individual Settlement Payments, Participating Class Member will be
5 deemed to release all claims under the FLSA that could have been asserted based on the alleged
6 facts and theories alleged in any of the complaints. Except as expressly set forth in this Agreement,
7 Participating Class Members do not release any other claims, including claims for vested benefits,
8 wrongful termination, violation of the Fair Employment and Housing Act, unemployment
9 insurance, disability, social security, workers' compensation, or claims based on facts occurring
10 outside the Class Settlement Period

11 1.31 "Released PAGA Claims" means all claims for civil penalties under PAGA asserted
12 in any of the complaints filed in the Action or PAGA Actions, and all claims that could have been
13 asserted in the Action or PAGA Actions based on the same alleged facts and theories in the
14 complaints or in the PAGA Notices sent by the Plaintiffs to the LWDA, including claims for
15 penalties based on violations of the California Labor Code and IWC Wage Orders for (1) unpaid
16 minimum wages; (2) unpaid overtime wages; (3) failure to provide meal periods and pay meal
17 period premiums; (4) failure to provide rest periods and pay rest period premiums; (5) failure to
18 provide accurate wage statements; (6) failure to keep accurate records; (7) failure to indemnify for
19 all necessary business expenses; (8) failure to timely pay wages during employment or at
20 termination; (9) failure to pay and accurately calculate all sick pay wages; (10) failure to provide
21 and accurately calculate COVID-19 supplemental sick pay; and (11) violations of California Labor
22 Code sections 201-204, 210, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 248.2, 510, 512, 558, 1174,
23 1174.5, 1194, 1197, 1197.1, 1198, 2802 and 2804. The Released PAGA Claims do not include
24 other PAGA claims, claims for wrongful termination, discrimination, unemployment insurance,
25 disability and worker's compensation, and claims outside of the PAGA Period.

26 1.32 "Released Parties" means Defendant TForce Freight, Inc. (formerly known as UPS
27 Ground Freight, Inc.) and any current or prior parent (including United Parcel Service, Inc.),
28 subsidiary, affiliated or related entities (including any companies, corporations, partnerships, alter

egos, joint venturers, and actual or alleged joint employers), and each of their respective past, present and future agents, employees, servants, officers, directors, partners, members, trustees, fiduciaries, representatives, shareholders, stockholders, attorneys, equity sponsors, divisions, assigns, predecessors, successors, insurers, and consultants.

1.33 “Response Deadline” means forty-five (45) days after the Settlement Administrator mails the Notice of Settlement to Settlement Class Members. It shall be the last date on which Settlement Class Members may: (a) postmark any Opt-Out Request from the class portion of the Settlement, (b) postmark any written objection to the Settlement, and (c) postmark any Eligible Workweek or Eligible Pay Period Dispute. The Response Deadline for Settlement Class Members to whom the Notice of Settlement is remailed after having been returned as undeliverable to the Settlement Administrator shall be fifty-five (55) calendar days after the Settlement Administrator’s initial mailing of the Notice of Settlement to Settlement Class Members, or fourteen (14) days after the re-mailing, whichever is later.

1.34 “Settlement Administration Costs” means the costs payable from the Gross Settlement Amount to the Settlement Administrator for administering this Settlement in accordance with the Settlement Administrator’s responsibilities outlined in this Settlement Agreement.

1.35 “Settlement Administrator” means CPT Group, Inc. who shall be responsible for, the administration of the Settlement, distribution of any amounts owed under this Settlement, and matters necessarily related thereto, pursuant to the terms of this Settlement, and subject to appointment by the Court.

1.36 “Settlement Class” or “Settlement Class Members” means all current and former California non-exempt employees of Defendant who have worked at least one Eligible Workweek during the Class Settlement Period.

2. **RECITALS**

2.1 **Background and Procedural History**

2.1.1 On March 10, 2021, Plaintiff Donyeisha Mish filed a putative class action in Alameda County Superior Court in action entitled *Mish v. UPS Ground Freight, Inc.*, Case No.

1 RG21091722. Defendant removed the *Mish* Class Action to the United States District Court for
2 the Northern District of California, where it is currently pending under Case No. 3:21-cv-04094-
3 EMC.

4 2.1.2 On July 14, 2021, Plaintiff Donyeisha Mish filed her putative representative
5 action under PAGA in Alameda Superior Court in an action entitled *Mish v. UPS Ground Freight,*
6 *Inc.*, Alameda Superior Court Case No. RG21105108.

7 2.1.3 On November 21, 2021, Plaintiff Victor Gonzalez filed his putative class
8 action in Riverside County Superior Court in an action entitled *Gonzalez v. TForce Freight, Inc.*,
9 Case No. CVRI2105223. The *Gonzalez* Class Action was subsequently removed, transferred, and
10 consolidated with the *Mish* Class Action in the Northern District of California under Case No. 3:22-
11 cv-01177.

12 2.1.4 Also on November 21, 2021, Plaintiff Victor Gonzalez filed his putative
13 representative action under PAGA in Riverside Superior Court, in an action entitled *Gonzalez v.*
14 *TForce Freight, Inc.*, Riverside County Superior Case No. CVRI2105225.

15 2.1.5 On November 24, 2021, Plaintiff Andrew Tappin filed a putative class action
16 in Sacramento Superior Court in an action entitled *Tappin v. TForce Freight, Inc.*, Case No. 34-
17 2021-00311727. The *Tappin* Class Action was subsequently removed, transferred, and
18 consolidated with the *Mish* Class Action in the Northern District of California under 2:22-cv-00322.

19 2.1.6 On January 31, 2022, Plaintiff Andrew Tappin filed his putative
20 representative action under PAGA in Sacramento Superior Court, in an action entitled *Tappin v.*
21 *TForce Freight, Inc.*, Sacramento County Superior Court Case No. 34-2022-00314820.

22 2.1.7 Through substantial and extensive formal and informal discovery, Defendant
23 provided Class Counsel with written policies and data reflecting the Settlement Class Members'
24 time worked, pay, workweeks, meal premiums paid, and employment status during the Class
25 Settlement Period. In addition to extensive written discovery and document productions, Plaintiff
26 took depositions of several of Defendant's managers.

27 2.1.8 On May 17, 2022, the Parties participated in a full-day, private mediation
28 with experienced wage and hour mediator Michael Young, Esq., regarding the claims and defenses

1 in the Action and the PAGA Actions and the data provided for the Settlement Class.. The case did
2 not settle on May 17, 2022, but the Parties continued to negotiate through Mr. Young for several
3 months until they reached an agreement in principle in December 2022. All of the terms of the
4 settlement are contained within this Stipulation of Settlement. At all times, the Parties' settlement
5 negotiations have been non-collusive, adversarial, and at arm's length.

6 2.1.9 As part of this Agreement, the Parties agree to stipulate to consolidate all
7 claims asserted in the Action, including class and PAGA claims, by filing an Amended
8 Consolidated Complaint in Sacramento County Superior Court (See Section 3.7.1 below), where
9 the Parties will seek approval of the Class Action Settlement. The Consolidated Amended
10 Complaint shall be the operative complaint in the Action (herein referred to as the "Operative
11 Complaint"), but if for any reason final approval of this Class Action Settlement is not obtained,
12 the Consolidated Amended Complaint shall be null and void, and the operative complaints on file
13 in the Action immediately prior to the date of this Agreement shall be the operative complaints.
14 The Parties shall file the stipulation for permission to file the "Operative Complaint" prior to filing
15 this Stipulation of Class and PAGA Representative Action Settlement.

16 2.2 **Benefits of Settlement**

17 2.2.1 Based on their own independent investigations and evaluations, Class
18 Counsel is of the opinion that the Settlement with Defendant for the consideration and terms set
19 forth herein, considering the representative and class claims, and the risk of loss, is fair, reasonable,
20 and adequate in light of all known facts and circumstances, and is in the best interests of the
21 Settlement Class. Class Counsel is also of the opinion that the total consideration and payment set
22 forth in this Stipulation of Settlement is fair, reasonable, and adequate in light of the uncertainties
23 surrounding the risk of further litigation, the possibility of losing class certification, that the PAGA
24 claims could be deemed unmanageable, and the defenses that Defendant has asserted and/or could
25 assert as to the substantive merit of the claims.

26 2.2.2 Class Counsel has weighed the monetary benefit under the Settlement to the
27 Settlement Class against the expenses and length of continued proceedings that would be necessary
28 to prosecute the Action and PAGA Actions against Defendant through class certification, through

1 manageability motions, summary judgment, trial and possible appeals. Class Counsel has also
2 taken into account the uncertain outcome and risk of any litigation, especially in complex actions
3 such as class and representative actions, as well as the difficulties and delay inherent in such
4 litigation. As a result, Class Counsel has determined that the settlement set forth in this Stipulation
5 of Settlement is in the best interests of the Settlement Class.

6 2.2.3 Defendant specifically and generally denies any and all liability or
7 wrongdoing of any sort with regard to the claims alleged in the Action, the PAGA Actions, and the
8 Operative Complaint, makes no concessions or admissions of liability of any sort, and contends
9 that for any purpose other than Settlement, the Action , the PAGA Actions, and the Operative
10 Complaint are not appropriate for class or representative action treatment. Nonetheless, Defendant
11 has concluded that further conduct of the Action and PAGA Actions would be protracted,
12 distracting, and expensive, and that it is desirable that the Action and PAGA Actions be fully and
13 finally settled in the manner and upon the terms and conditions set forth in this Stipulation.
14 Defendant has also taken into account the uncertainty and risks inherent in any litigation.
15 Defendant has therefore determined that it is desirable and beneficial to it to settle the Action and
16 PAGA Actions in the manner and upon the terms and conditions set forth in this Stipulation.

17 2.2.4 Neither this Stipulation of Settlement, nor any document referred to in it, nor
18 any actions taken pursuant to this Stipulation of Settlement, is or should be construed as an
19 admission by Defendant of any fault, wrongdoing, or liability whatsoever. Nor should the
20 Stipulation of Settlement be construed as an admission that Plaintiffs could meet any of the class
21 action requirements or that any PAGA claims would be manageable. There has been no final
22 determination by any court as to the merits of the claims asserted by Plaintiffs against Defendant,
23 as to whether a class action should be certified, or that any PAGA claim is manageable.

24 3. SETTLEMENT TERMS

25 3.1 **Conditional Class Certification.** The Parties stipulate, for settlement purposes
26 only, to the certification by the Court of the Settlement Class. If, for any reason, the Court does
27 not approve this Stipulation, fails to enter the Judgment, or if this Stipulation is terminated for any
28

other reason, the Settlement Class will be decertified and Defendant shall, and hereby does, retain the right to dispute the appropriateness of class certification.

3.2 **Gross Settlement Amount**

3.2.1 Gross Settlement Amount: Defendant shall pay a non-reversionary amount in the amount of Eight Million, Two Hundred and Fifty Thousand Dollars and Zero Cents (\$8,250,000) as the Gross Settlement Amount to resolve the Action and the PAGA Actions on a class and representative basis, subject to section 3.2.2. The Gross Settlement Amount shall be used to pay, as approved by the Court, Class Counsel's attorneys' fees and costs, Enhancement Awards to Class Representatives, Settlement Administration Costs, the PAGA Payment to the LWDA and the PAGA Members, and the Individual Settlement Payments to the Participating Class Members. To eliminate doubt, the Gross Settlement Amount is an "all in" payment, and Defendant shall not be obligated to pay any additional amount. Notwithstanding the foregoing, in addition to the Gross Settlement Amount, Defendant will pay the employer's portion of payroll taxes, including FICA and FUTA, on the portion of each Individual Settlement Payment allocated as unpaid wages.

3.2.2 Escalation of Gross Settlement Amount or Truncation of Class Settlement Period: In connection with mediation, Defendant identified 423,311 estimated Eligible Workweeks projected through April 14, 2023. At Defendant's option, if the Eligible Workweeks exceed 465,642 (423,311 plus 10%) it can either (1) pay a pro rata amount for those Eligible Workweeks above the 10%; or (2) the Class Settlement Period and PAGA Settlement Period shall end as of the date the actual number of Eligible Workweeks reaches 465,642.

3.3 **Allocation of Gross Settlement Amount**

3.3.1 Class Representative Enhancement Awards: The Class Representatives' Enhancement Awards, which are in addition to each Class Representative's Individual Settlement Payment from the Net Settlement Amount and Individual PAGA Payment as PAGA Members, will, subject to Court approval, be paid out of the Gross Settlement Amount and will not exceed \$10,000, less taxes and withholdings, for the Class Representatives' services and assistance to the Class. Defendant will not oppose Plaintiffs' request for Class Representative Service Payments

1 that do not exceed this amount. Any amount of the Class Representative Enhancement Awards
2 that is not awarded by the Court shall be added to the Net Settlement Amount.

3 3.3.2 Attorneys' Fees and Costs: Class Counsel may apply to the Court for an
4 award of reasonable attorneys' fees not to exceed one third (1/3) of the Gross Settlement Amount,
5 which presently equals \$2,750,000.00, and will seek an award of costs for reimbursement of Class
6 Counsel's out-of-pocket costs incurred up to an additional \$50,000.00, to be paid out of the Gross
7 Settlement Amount, and Defendant agrees not to oppose a request that does not exceed these
8 amounts. Attorneys' fees will be allocated among Class Counsel as follows: 71.25% to M&A,
9 21.25% to BNBD, and 7.5% to JH. Defendant reserves the right to challenge Class Counsel's
10 requests for fees and costs if the requests exceed the parameters established by this Settlement
11 Agreement. The Settlement Administrator shall issue IRS Forms 1099 to Class Counsel for the
12 payments made pursuant to this section. Class Counsel shall be solely and legally responsible for
13 paying any and all applicable taxes on their fees and costs award and shall indemnify, defend, and
14 hold the Released Parties harmless from any claim or liability for taxes, penalties or interest arising
15 as a result of any payments received by Class Counsel pursuant to this Agreement. Any amount of
16 Class Counsel's requested fees and costs that is not awarded by the Court shall be added to the Net
17 Settlement Amount. Neither Class Counsel nor any other attorneys acting for, or purporting to act
18 for, the Settlement Class, Settlement Class Members, or Plaintiffs, may recover or seek to recover
19 any amounts for fees, costs, or disbursements from the Defendant or the Released Parties except as
20 expressly provided herein.

21 3.3.3 Settlement Administrator Costs: The Settlement Administration Costs
22 incurred by the Settlement Administrator as a result of the procedures and processes expressly
23 required by this Stipulation shall be paid out of the Gross Settlement Amount and are estimated not
24 to exceed \$21,000.00. Under no circumstances will Defendant be required to contribute additional
25 funds, above and in addition to the Gross Settlement Amount, to cover any unexpected Settlement
26 Administration Costs. The Settlement Administration Costs shall include: all costs of
27 administering the Settlement, including providing CAFA notice to relevant state and federal
28 authorities, all tax document preparation, custodial fees, and accounting fees incurred by the

1 Settlement Administrator; all costs and fees associated with establishing and maintaining a
2 Qualified Settlement Fund; all costs and fees associated with preparing, issuing and mailing the
3 Notice of Settlement and other correspondence to Settlement Class Members; all costs and fees
4 associated with communicating with Settlement Class Members, Class Counsel, and Defendant's
5 Counsel; all costs and fees associated with computing, processing, reviewing, and paying the
6 payments due under this Stipulation, and resolving disputed claims; all costs and fees associated
7 with calculating tax withholdings and payroll taxes, making related payment to federal and state
8 tax authorities, and issuing tax forms relating to payments made under the Settlement; all costs and
9 fees associated with preparing any tax returns and any other filings required by any governmental
10 taxing authority or agency; all costs and fees associated with preparing any other notices, reports,
11 or filings to be prepared in the course of administering payments due under this Stipulation; and
12 any other costs and fees incurred and/or charged by the Settlement Administrator in connection
13 with the execution of its duties under this Stipulation.

14 3.3.4 Individual Settlement Payments to Participating Class Members: Each
15 Participating Class Member will be entitled to receive an Individual Settlement Payment, which
16 will be paid out of the Net Settlement Amount. The amount of each Individual Settlement Payment
17 will be calculated on a pro rata basis, based on the Eligible Workweeks each Participating Class
18 Member worked during the Class Settlement Period. There is no need for a Participating Settlement
19 Class Member to submit a claim form in order to be eligible for and to receive an Individual
20 Settlement Payment. To determine each Settlement Class Member's estimated "Individual
21 Settlement Payment," the Settlement Administrator will use the following formula: estimated
22 Individual Settlement Payment = individual Eligible Workweeks ÷ all Settlement Class Member
23 Eligible Workweeks × Net Settlement Amount. The Parties recognize that the Individual
24 Settlement Payments to be paid to Participating Class Members reflect settlement of a dispute over
25 claimed wages, interest, penalties, and other alleged damages.

26 3.3.5 PAGA Payment: A total amount of \$165,000 from the Gross Settlement
27 Amount will be allocated as the PAGA Payment to be paid as penalties under PAGA, seventy-five
28 percent (75%) of this amount (\$123,750) will be the LWDA PAGA Payment to be paid to the LWDA

1 and the remaining twenty-five (25%) of this amount (\$41,250) shall be distributed to the PAGA
2 Members as Individual PAGA Payments. Any portion of the PAGA Payment not approved by the
3 Court shall be added to the Net Settlement Amount and any additional amount ordered by the Court
4 shall be paid from the Gross Settlement Amount. The 25% of the PAGA Payment to be distributed
5 to the PAGA Members as Individual PAGA Payments and shall be distributed based on a pro rata
6 share based on the number of Eligible Pay Periods each PAGA Member worked during the PAGA
7 Settlement Period.

8 3.4 Taxation

9 3.4.1 Tax Treatment of Individual Settlement Payments. All Individual
10 Settlement Payments to Participating Class Members shall be allocated as follows for tax purposes:
11 33% of each Individual Settlement Payment reflects compromise of a claim for alleged unpaid
12 wages; 67% of each Individual Settlement Payment reflects compromise of a claim for alleged
13 interest, reimbursable expenses and penalties. The portion of the Individual Settlement Payment
14 attributable to unpaid wages will be subject to regular and/or applicable payroll and income tax
15 withholdings (for the employee portion only), and will be reported on an IRS Form W-2.
16 Participating Class Members will each indemnify and hold harmless the Released Parties for any
17 taxes due or owing by the Participating Class Members with respect to such payments and/or any
18 penalties and interest owed by the Released Parties for the failure to withhold with respect to such
19 payments. The Settlement Administrator shall make appropriate tax withholdings from the portion
20 of each Individual Settlement Payment designated as unpaid wages, and shall pay the employer
21 portion of payroll taxes with funds separate from the Gross Settlement Amount to be furnished by
22 Defendant. Participating Class Members will be responsible for paying all other taxes due on their
23 Individual Settlement Payments. Other than as set forth above, the Settlement Administrator will
24 not make any deductions, withholdings, or additional payments, including without limitation,
25 medical or other insurance payments or premiums, employee 401(k) contributions or matching
26 employer contributions, wage garnishments to the extent permitted by law, or charity withholdings,
27 from or with respect to the Individual Settlement Payments, and entry of the Order of Final
28

1 Approval by the Court shall be deemed authority not to make any such deductions, withholdings,
2 or additional payments.

3 3.4.2 Tax Treatment of Individual PAGA Payments: All Individual PAGA
4 Payments shall be allocated as 100% penalties, for which a 1099 will be issued if required. PAGA
5 Members will be responsible for paying all other taxes due on their Individual PAGA Payments.
6 PAGA Members will be responsible for paying all taxes due on their Individual PAGA Payments.
7 The Settlement Administrator will not make any deductions, withholdings, or additional payments,
8 including without limitation, medical or other insurance payments or premiums, employee 401(k)
9 contributions or matching employer contributions, wage garnishments to the extent permitted by
10 law, or charity withholdings, from or with respect to the Individual PAGA Payments.

11 3.4.3 Circular 230 Disclaimer: Each Party to this Stipulation (for purposes of this
12 section, the “acknowledging party” and each Party to this Stipulation other than the acknowledging
13 party, an “other party”) acknowledges and agrees that (1) no provision of this Stipulation, and no
14 written communication or disclosure between or among the Parties or their attorneys and other
15 advisers, is or was intended to be, nor shall any such communication or disclosure constitute or be
16 construed or be relied upon as, tax advice within the meaning of United States Treasury Department
17 Circular 230 (31 CFR Part 10, as amended); (2) the acknowledging party (a) has relied exclusively
18 upon his, her, or its own, independent legal and tax counsel for advice (including tax advice) in
19 connection with this Agreement, (b) has not entered into this Stipulation based upon the
20 recommendation of any other party or any attorney or advisor to any other party, and (c) is not
21 entitled to rely upon any communication or disclosure by any attorney or adviser to any other party
22 to avoid any tax penalty that may be imposed on the acknowledging party; and (3) no attorney or
23 adviser to any other party has imposed any limitation that protects the confidentiality of any such
24 attorney’s or adviser’s tax strategies (regardless of whether such limitation is legally binding) upon
25 disclosure by the acknowledging party of the tax treatment or tax structure of any transaction,
26 including any transaction contemplated by this Stipulation.

27 3.5 **No Effect on Employee Benefits.** Neither the Settlement nor any amounts paid
28 under the Settlement will modify any previously credited hours or service under any employee

benefit plan, policy, or bonus program sponsored by the Released Parties. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under the Released Parties' sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Stipulation shall not be applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of the Released Parties' benefit plans, policies, or bonus programs. The Released Parties retain the right to modify the language of their benefit plans, policies and bonus programs to effectuate this intent, and to make clear that any amounts paid pursuant to this Settlement are not for "hours worked," "hours paid," "hours of service," or any similar measuring term as defined by applicable plans, policies and bonus programs for purposes of eligibility, vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not required by this Stipulation of Settlement.

3.6 Releases

3.6.1 Class Representatives Release. As of the Effective Date, the Class Representatives shall each be deemed to have fully, finally, and forever released the Released Parties from all Class Representatives' Released Claims through the Final Approval Date. The Class Representatives may hereafter discover claims or facts in addition to, or different from, those which they now know or believe to exist, but Class Representatives expressly agree to fully, finally and forever settle and release any and all claims against the Released Parties, known or unknown, suspected or unsuspected, which exist or may exist on behalf of or against the other at the time of execution of this Agreement. The Class Representatives shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits they may otherwise have had relating to the Class Representatives' Released Claims pursuant to Section 1542 of the California Civil Code, which provides as follows:

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.

1 Notwithstanding the foregoing, Class Representatives do not waive or release any claim which
2 cannot be waived or released by private agreement or law, including worker's compensation claims.
3 Further, nothing in this Agreement shall prevent Class Representatives from filing a charge or
4 complaint with, or from participating in, an investigation or proceeding conducted by the SEC,
5 OSHA, EEOC, DFEH, NLRB or any other federal, state or local agency charged with the
6 enforcement of any employment or other applicable laws. Class Representatives, however,
7 understand that by signing this Agreement, they waive the right to recover any damages or to
8 receive other relief in any claim or suit brought by or through the EEOC, the DFEH or any other
9 state or local deferral agency on his behalf to the fullest extent permitted by law, but expressly
10 excluding any monetary award or other relief available from the SEC/OSHA, including an
11 SEC/OSHA whistleblower award, or other awards or relief that may not lawfully be waived.

12 3.6.2 Participating Class Member Release. As of the Effective Date, all
13 Participating Class Members fully and finally release the Released Parties from the Released
14 Claims that arose during the Class Settlement Period.

15 3.6.3 PAGA Member Release. As of the date of the Effective Date, Plaintiffs
16 Mish, Gonzalez and Tappin, as representatives of the State of California and on behalf of the
17 LWDA and as representatives of the PAGA Members, fully and finally release the Released Parties
18 from the PAGA Released Claims for the PAGA Settlement Period.

19 3.7 **Consolidation, Amendments, Exhaustion, and Dismissals**

20 3.7.1 Consolidation and Amendment. The Parties will stipulate and request the
21 Court's approval to file in the Tappin PAGA Action, Superior Court of California, County of
22 Sacramento, Case No. 34-2022-00314820 an amended consolidated complaint for settlement
23 purposes only that adds all the facts, claims, and legal theories from each of the claims asserted in
24 the Action, conditioned upon final approval of the settlement. If, for any reason, the Court does
25 not grant preliminary or final approval of the settlement, or the Effective Date of the agreement is
26 not triggered, the consolidated complaint shall be stricken, the operative complaints on file in the
27 Action immediately prior to the date of this Agreement shall be the operative complaints, and the
28 Parties will return to the status quo prior to the execution of this agreement, which includes a stay

of each PAGA action in state court and active litigation in the consolidated *Mish* action in the Northern District of California.

4. APPROVAL OF SETTLEMENT, NOTICE TO CLASS AND ADMINISTRATION

4.1 Preliminary Approval

4.1.1 Class Counsel shall submit to the Court this Stipulation of Settlement and exhibits thereto for preliminary approval by the Court. Class Counsel will prepare and file the motion for preliminary approval and supporting papers for the Court, subject to Defendant's prior review and approval. Plaintiffs will provide the motion for preliminary approval to Defendant for its review and approval at least seven days before filing.

4.1.2 Pursuant to California Labor Code § 2699(l), concurrently with the filing of the motion for Preliminary Approval, Plaintiffs will provide notice of the proposed Settlement to the LWDA.

4.1.3 The Court's preliminary approval of this Settlement shall be embodied in an order certifying the Class for settlement purposes only, preliminarily approving the Settlement and providing for Notice of Settlement to be mailed to the Class in materially the same format attached hereto as **Exhibit 1**, and which will also set the date for the Final Approval Hearing. The Notice of Settlement shall advise Settlement Class Members of their options, which include filing an Opt-Out Request to the class settlement; filing an objection to the Settlement and receiving an Individual Settlement Payment and an Individual PAGA Payment (if applicable); or taking no action and receiving an Individual Settlement Payment and an Individual PAGA Payment (if applicable).

4.2 Notice

4.2.1 Delivery of Class Data: No later than thirty (30) calendar days after the Preliminary Approval Date, Defendant shall provide the Class Data to the Settlement Administrator. The Settlement Administrator shall maintain the Class Data, and all data contained within the Class Data, as private and confidential and shall not disclose such data to any persons or entities, unless otherwise required by law. The information in the Class Data is being supplied solely for purposes of the administration of the settlement and cannot be used by the Settlement

1 Administrator or any agent or representative of the Settlement Administrator for any purpose other
2 than to administer the Settlement. Upon receipt of the Class Data, the Settlement Administrator
3 shall check with the U.S. Postal Service National Change of Address Database and update any
4 addresses for the Settlement Class Members.

5 4.2.2 Notice By First-Class Mail. Within fourteen (14) calendar days of the
6 receipt of the Class Data, the Settlement Administrator will send via United States first class mail
7 the Notice of Settlement to the Settlement Class Members. If any Notice of Settlement is returned
8 to the Settlement Administrator as undeliverable, the Settlement Administrator shall run a skip-
9 trace using that Settlement Class Member's social security number in an effort to attempt to
10 ascertain the current address of the Settlement Class Member. If such an address(es) is ascertained,
11 the Settlement Administrator shall re-mail the Notice of Settlement within ten (10) calendar days.
12 If alternative addresses are obtained for a Settlement Class Member, the Settlement Administrator
13 shall send the Notice of Settlement to up to two (2) alternative addresses.

14 4.3 **Opt-Out Requests**

15 4.3.1 Settlement Class Members, except for the Class Representatives, will have
16 until the Response Deadline within which to opt out of the class portion of this Settlement; however,
17 exercising this option has no effect on the PAGA portion of this settlement, PAGA Members will
18 be mailed an Individual PAGA Payment and be bound by the release of the Released PAGA Claims
19 regardless of whether they opt out of the class settlement. Settlement Class Members who want to
20 opt out must timely submit a signed and dated written request to be excluded from the class portion
21 of the Settlement to the Settlement Administrator ("Opt-Out Request"). The Opt-Out Request must
22 be postmarked on or before the Response Deadline, include the case name and number, the
23 Settlement Class Member's name, address, and last four of their social security number, must be
24 signed by the Settlement Class Member, and must reasonably communicate the Settlement Class
25 Member's election to be excluded from the class Settlement.

26 4.3.2 Settlement Class Members who do not timely submit an executed Opt-Out
27 Request shall be deemed a Participating Class Member and bound by this Settlement including the
28 Participating Class Member Release. Settlement Class Members who timely submit an executed

1 Opt-Out Request will not be bound by the Participating Class Member Release and will not receive
2 an Individual Settlement Payment. The Notice of Settlement shall advise Settlement Class
3 Members of their ability to opt out of the class portion of the Settlement and of the consequences
4 thereof, and further inform them that they cannot opt out of the PAGA settlement. Neither the
5 Parties nor any of their counsel will solicit any Settlement Class Member to submit an Opt-Out
6 Request.

7 4.3.3 If a Settlement Class Member submits both an Opt-Out Request and an
8 Objection within the Response Deadline, then the Opt-Out Request will be deemed valid and the
9 Objection invalid and the individual will not be deemed a Participating Class Member.

10 4.4 **Objections.** Participating Class Members, except for the Class Representatives,
11 may object to the Settlement in person at the Final Approval Hearing and/or in writing.
12 Participating Class Members, except for the Class Representatives, will have until the Response
13 Deadline to mail a written objection to the Settlement and a notice of intent to appear at the Final
14 Approval Hearing, which must be mailed to the Settlement Administrator. The written objection
15 should state the Participating Class Member's name and address and describe the reason(s) why
16 the Participating Class Member objects to the Settlement and include or attach any documents upon
17 which the objection is based. The Parties and their counsel agree that they will not solicit,
18 encourage, counsel or advise any individual to object to the Settlement.

19 4.5 **Eligible Workweek and Eligible Pay Period Disputes.** Participating Class
20 Members and PAGA Members may dispute their Eligible Workweeks and Eligible Pay Periods if
21 they believe they were employed for more Eligible Workweeks or Eligible Pay Periods in the Class
22 Settlement Period or PAGA Settlement Period than stated on their Notice of Settlement.
23 Participating Class Members and PAGA Members may do this by submitting information to the
24 Settlement Administrator in writing no later than the Response Deadline. The Settlement
25 Administrator will jointly work with Class Counsel and Defendant's Counsel to resolve the dispute
26 in good faith. If the Parties cannot agree on the Eligible Workweeks or Eligible Pay Periods to be
27 credited to that Participating Class Member or PAGA Member, the Court shall make the final
28 decision based on the information presented by the individual and the Parties.

1 **4.6 Certification Reports by the Settlement Administrator.** The Settlement
2 Administrator will, on a weekly basis during and for a reasonable period following distribution of
3 the Notice of Settlement, provide updates to Class Counsel and Defendant's Counsel as to the
4 number of persons in the Settlement Class who submitted (i) valid Opt-Out Requests; (ii) written
5 objections, and (iii) Eligible Workweeks or Eligible Pay Period disputes. All written objections
6 shall be provided to the Parties' counsel within 2 days of receipt by the Settlement Administrator.
7 To the extent practicable, the weekly updates shall also provide updated data on the extent of
8 Notices of Settlement that are returned undeliverable and any re-mailing efforts.

9 **4.7 Nullification of Settlement.** Defendant shall have the sole right to void and
10 withdraw from this Agreement if at any time prior to the Final Approval Date: (a) three percent
11 (3%) or more of all Settlement Class Members submit timely and valid Opt-Out Requests; or (b)
12 the Settlement is construed in such a fashion that Defendant would be required to pay more than
13 the Gross Settlement Amount (except if pursuant to section 3.2.2), exclusive of Defendant's share
14 of the employer payroll taxes; or (c) the Court does not certify the Settlement Class, or does not
15 certify a class releasing all of the Released Class Claims defined in this Agreement, or does not
16 approve the PAGA settlement including the release of the Released PAGA Claims, or otherwise
17 makes an order inconsistent with any of the material terms (as determined by Defendant) of this
18 Agreement; (d) any pending litigation or litigation filed prior to the Final Approval Date in any
19 way prevents this Agreement from resolving all claims identified in the Class Representatives'
20 Released Claims, Released Class Claims and Released PAGA Claims, as defined herein; or (e)
21 Plaintiffs or Class Counsel materially breach this Agreement.

22 **4.8 Final Approval and Entry of Final Judgment**

23 **4.8.1** Prior to the Final Approval Hearing, Plaintiffs will move the Court for entry
24 of an "Order of Final Approval" and associated entry of Judgment: (a) certifying the Settlement
25 Class for Settlement purposes only, (b) finding the Settlement fair, reasonable, adequate, and in the
26 best interests of the Participating Class Members, (c) approving the PAGA Payment to the LWDA
27 and the PAGA Members; (d) approving Class Counsel's application for an award of attorneys' fees
28 and costs, (e) approving the Class Representatives' application for Enhancement Awards, (f)

1 approving the payment of reasonable Settlement Administration Costs, and (g) releasing and
2 barring any further Released Class Claims by Participating Class Members and Released PAGA
3 Claims by or on behalf of the PAGA Members. Plaintiffs will provide the motion for final approval
4 to Defendant for its review and approval at least seven days before filing. The Parties and their
5 respective counsel shall make all reasonable efforts to secure entry of the Order of Final Approval.
6 The proposed Order of Final Approval and the associated proposed Judgment shall be filed with
7 the Court with the motion for final approval, or as otherwise directed by the Court.

8 4.8.2 Class Representatives and Class Counsel shall be responsible for justifying
9 the amount of the Enhancement Awards and attorneys' fees and costs to the Court, and they agree
10 to submit, as appropriate, the necessary materials to justify these payments. If the Court (or any
11 appellate court) awards less than the amount requested for attorneys' fees and/or costs, or less than
12 the amount requested for the Enhancement Awards for the Class Representatives, only the awarded
13 amounts shall be paid and shall constitute satisfaction of the obligations of Defendant under this
14 Stipulation.

15 4.8.3 If an appeal results in an order materially modifying, setting aside, or
16 vacating any portion of the Stipulation, with the exception of any modification of the amount of
17 attorneys' fees or costs to be paid to Class Counsel, or the amount of the Enhancement Awards
18 paid to the Class Representatives, each party adversely impacted by the order shall have the right
19 to treat such order as an event preventing Final Approval. To exercise this right, the party must
20 inform the other party and the Settlement Administrator, in writing, of the exercise of this right,
21 within ten (10) calendar days of receiving notice of any order modifying, setting aside, or vacating
22 any portion of the Stipulation. Before any Party elects to exercise its right to treat such order as an
23 event permanently preventing Final Approval, that Party must meet and confer in good faith with
24 the other Party to determine if an agreement can be reached modifying this Settlement to the mutual
25 satisfaction of the Parties.

26 4.8.4 If the Final Approval does not occur, or if this Stipulation is terminated or
27 canceled pursuant to its terms, the Parties to this Stipulation shall be deemed to have reverted to
28 their respective status as of the date and time immediately prior to the execution of this Stipulation.

1 In such an event, if the Stipulation is not approved by the Court substantially in the form agreed to
2 by the Parties, or if the Settlement set forth in the Stipulation is terminated, cancelled, declared
3 void, or fails to become effective in accordance with its terms, or if the Judgment does not become
4 a Final Judgment, or if the Final Approval Date does not occur, the Parties agree to cooperate and
5 use their best efforts to obtain approval of the Settlement, and address any issues or concerns raised
6 by the Court, including moving again for approval, filing supplemental briefing, and/or taking other
7 reasonable steps to obtain Final Approval. If Final Approval still is not obtained, this Stipulation
8 (except for those provisions relating to non-admission, denial of liability set forth herein, and the
9 confidentiality agreements entered into by the Parties) shall be deemed null and void, its terms and
10 provisions shall have no further force and effect and shall not be used in this Action or the PAGA
11 Actions or in any other proceeding for any purpose, and any Judgment or order entered by the Court
12 in accordance with the terms of the Stipulation shall be treated as vacated, *nunc pro tunc*.
13 Notwithstanding any other provision of this Stipulation, no order of the Court, or modification or
14 reversal on appeal of any order of the Court, reducing the amount of any attorneys' fees or costs to
15 be paid by Defendant to Class Counsel, or reducing the amount of any Enhancement Award paid
16 to the Class Representatives, shall constitute grounds for cancellation or termination of the
17 Stipulation, or grounds for limiting any other provision of the Judgment.

18 **4.9 Funding and Distribution of the Settlement Proceeds**

19 4.9.1 Within fifteen (15) calendar days after the Effective Date, Defendant shall
20 pay the Gross Settlement Amount by wire transfer into the Qualified Settlement Fund set up, held,
21 and controlled by the Settlement Administrator.

22 4.9.2 Within fifteen (15) calendar days after Defendant funds the Qualified
23 Settlement Fund, the Settlement Administrator shall issue Individual Settlement Payments to
24 Participating Class Members, Individual PAGA Payments to the PAGA Members, the LWDA
25 PAGA Payment to the LWDA, the Court-approved attorneys' fees and costs to Class Counsel, and
26 the court-approved Enhancement Awards to the Class Representatives. Payments to M&A shall
27 be made payable to "Makarem & Associates Settlement Account," or sent by wire transfer to wire
28

1 information to be provided by M&A, which the Settlement Administrator shall confirm orally with
2 M&A prior to sending any wire transfer.

3 4.9.3 The Settlement Administrator shall keep counsel for the Parties apprised of
4 all distributions from the Qualified Settlement Account and upon completion of administration of
5 that portion of the Settlement, the Settlement Administrator shall provide written certification,
6 under penalty of perjury, of such completion to the Court and counsel for all Parties.

7 4.9.4 Upon completion of administration of the Settlement, the Settlement
8 Administrator shall provide written certification, under penalty of perjury, of such completion to
9 the Court, Class Counsel and Defendant's Counsel.

10 4.10 **Uncashed Checks.** After one hundred and eighty (180) calendar days of issuance,
11 funds from undeposited Individual Settlement Payment and Individual PAGA Payment checks will
12 be held by the Settlement Administrator. Thereafter, the Settlement Administrator will transmit
13 the amount of that uncashed settlement payment to the State of California, to be held by the
14 Controller in accordance with California's Unclaimed Property Law for the benefit of those
15 Participating Class Members and PAGA Members who did not cash their checks until such time
16 that they claim their property. The Parties agree that this disposition results in no "unpaid residue,"
17 as the entire Net Settlement Amount will be paid out to Participating Class Members, whether or
18 not they all cash their Individual Settlement Payments.

19 5. **MISCELLANEOUS PROVISIONS**

20 5.1 **This Settlement is Fair, Adequate and Reasonable.** The Parties believe this
21 Settlement is a fair, adequate and reasonable settlement of the Lawsuits and have arrived at this
22 Settlement in arms-length negotiations, taking into account all relevant factors, present and
23 potential.

24 5.2 **Invalidity of Any Provision.** Before declaring any provision of this Settlement
25 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent
26 possible consistent with applicable precedents so as to define all provisions of this Settlement
27 Agreement valid and enforceable. Should the Court deem any clause or provision of this
28

1 Agreement be invalid, illegal, or unenforceable, it shall first attempt to modify or reform it as
2 minimally necessary to be valid, lawful, and enforceable.

3 **5.3 No Admission.** Neither the acceptance nor the performance by Defendant of the
4 terms of this Stipulation, nor any of the related negotiations or proceedings, is or shall be claimed
5 to be, construed as, or deemed to be, an admission by Defendant of the truth of any of the allegations
6 in the Complaint, the representative character of the Action and the PAGA Actions, the validity of
7 any of the claims that were or could have been asserted by Plaintiffs, Settlement Class Members
8 and/or PAGA Members in the Action and the PAGA Actions, or of any liability or guilt of
9 Defendant or the Released Parties in the Action and PAGA Actions. Nothing in this Stipulation
10 shall be construed to be or deemed an admission by Defendant of any liability, culpability,
11 negligence, or wrongdoing toward Plaintiffs, the Settlement Class Members, or any other person,
12 and Defendant specifically disclaims any liability, culpability, negligence, or wrongdoing toward
13 Plaintiffs, the Settlement Class Members, PAGA Members and any other person. Each of the
14 Parties has entered into this Stipulation with the intention to avoid further disputes and litigation
15 with the attendant inconvenience, expenses, and contingencies.

16 **5.4 Cooperation.** The Parties agree to cooperate fully with one another to accomplish
17 and implement the terms of this Settlement. Such cooperation shall include, but not be limited to,
18 execution of such other documents and the taking of such other action as may reasonably be
19 necessary to fulfill the terms of this Settlement. The Parties to this Settlement shall exercise
20 reasonable efforts, including all efforts contemplated by this Settlement and any other efforts that
21 may become necessary by Court order, or otherwise, to effectuate this Settlement and the terms set
22 forth herein.

23 **5.5 Privacy of Documents and Information.** Plaintiffs and Class Counsel agree that
24 none of the documents and information provided to them by Defendant in connection with the
25 Action and this Settlement shall be used for any purpose (including in any other litigation) other
26 than settlement of the Action and PAGA Actions.

27 **5.6 Notices.** Unless otherwise specifically provided herein, all notices, demands, or
28 other communications given hereunder shall be in writing and shall be deemed to have been duly

1 given as of the third business day after mailing by United States certified mail, return receipt
2 requested, addressed as follows:

3 **To the Class Counsel:**

4 Ronald W. Makarem, Esq.
5 Samuel Almon, Esq.
6 Daniel J. Bass, Esq.
7 MAKAREM & ASSOCIATES APLC
8 11601 Wilshire Boulevard, Suite 2440
9 Los Angeles, California 90025-1760

10 Norman B. Blumenthal
11 Kyle R. Nordrehaug
12 Aprajit Bhowmik
13 Nicholas J. De Blouw
14 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
15 2255 Calle Clara
16 La Jolla, CA 92037

17 James R. Hawkins, Esq.
18 Gregory Mauro, Esq.
19 Michael Calvo, Esq.
20 Jeanne Sarmiento, Esq.
21 JAMES HAWKINS APLC
22 9880 Research Drive, Suite 200
23 Irvine, CA 92618

24 **To Defendant:**

25 Brian D. Berry
26 Sarah Zenewicz
27 J.P. Schreiber
28 Ashlee Cherry
Morgan, Lewis & Bockius LLP
One Market, Spear Street Tower
San Francisco, California 94105-1126

5.7 **Drafting.** The Parties hereto agree that the terms and conditions of this Stipulation of Settlement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that this Stipulation shall not be construed in favor of or against any party by reason of the extent to which any party or its counsel participated in the drafting of this Stipulation.

5.8 **Publicity.** Neither Plaintiffs nor Class Counsel shall issue any press release or announcement of any kind related in any way to the settlement. Plaintiffs and Class Counsel agree that, prior to final approval of the settlement and entry of judgment, they will keep the terms of the settlement confidential. From preliminary approval of the settlement through entry of judgment,

1 Plaintiffs and Class Counsel may: (1) as required by law; (2) as required under the terms of the
2 settlement; or (3) as required under counsel's duties and responsibilities as class counsel, comment
3 regarding the specific terms of the settlement. Nothing in this Paragraph is intended to interfere
4 with Class Counsel's duties and obligations to faithfully discharge their duties as Class Counsel,
5 including but not limited to, communicating with Settlement Class Members regarding the
6 settlement, and nothing shall prohibit Class Counsel from referring to the settlement in adequacy
7 of counsel declarations or related court filings.

8 **5.9 No Exclusion by Class Representatives.** The Class Representatives, by signing
9 this Stipulation, are bound by the terms herein and further agree not to request to be excluded from
10 the Settlement and not to object to any terms of this Stipulation. Any such request for exclusion or
11 objection shall therefore be void and of no force or effect. Class Counsel and the Class
12 Representatives waive their rights to file an appeal, writ, or any challenge whatsoever to the terms
13 of this Stipulation, except either Party may appeal in the event an objector's objection is upheld by
14 the trial court.

15 **5.10 Modification.** This Stipulation may not be changed, altered, or modified, except in
16 writing signed by the Parties hereto and approved by the Court. This Stipulation may not be
17 discharged except by performance in accordance with its terms or by a writing used by the Parties
18 hereto.

19 **5.11 Binding on Successors.** This Stipulation shall be binding upon and inure to the
20 benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
21 successors, and assigns.

22 **5.12 Execution in Counterparts.** This Stipulation shall become effective upon its
23 execution by all of the undersigned. The Parties may execute this Stipulation in counterparts, and
24 execution of counterparts shall have the same force and effect as if all Parties had signed the same
25 instrument.

26 **5.13 Jurisdiction.** The Court shall retain jurisdiction with respect to the implementation
27 and enforcement of the terms of the Stipulation, and all Parties hereto submit to the jurisdiction of
28

the Court for purposes of implementing and enforcing the Settlement embodied in the Stipulation. Any action to enforce this Stipulation shall be commenced and maintained only in the Court.

5.14 Headings. Paragraph titles or captions contained in the Stipulation are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Stipulation, or any provision thereof.

5.15 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.

IN WITNESS WHEREOF, this Stipulation of Settlement is executed by the Parties and their duly authorized attorneys, as of the day and year herein set forth.

AGREED AND UNDERSTOOD.

DATED: _____, 2023 _____
Donyeisha Mish

DATED: _____, 2023 _____
Darnell Lee

DATED: _____, 2023 _____
Luis Robles

DATED: _____, 2023 _____
Xochitl Velasco

DATED: _____, 2023 _____
Victor Gonzalez

the Court for purposes of implementing and enforcing the Settlement embodied in the Stipulation.
Any action to enforce this Stipulation shall be commenced and maintained only in the Court.

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AGREED AND UNDERSTOOD.

DATED: 03 / 19 / 2024, 2023



Donyeisha Mish

DATED: 03 / 19 / 2024, 2023



Darnell Lee

DATED: 03 / 20 / 2024, 2023



Luis Robles

DATED: 03 / 19 / 2024, 2023



Xochitl Velasco

DATED: _____, 2023

Victor Gonzalez

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AGREED AND UNDERSTOOD.

DATED: _____, 2023
Donyeisha Mish

DATED: _____, 2023
Darnell Lee

DATED: _____, 2023
Luis Robles

DATED: _____, 2023
Xochitl Velasco

Mar 13, 2024
DATED: _____, 2023

Victor Gonzalez (Mar 13, 2024 11:36 PDT)
Victor Gonzalez

1 DATED: _____, 2023

Andrew D. Tappin

2 TFORCE FREIGHT, INC. (F/K/A UPS GROUND
3 FREIGHT, INC.)

4 DATED: _____, 2023

By: _____

Its: _____

7 **APPROVED AS TO FORM:**

MAKAREM & ASSOCIATES, APLC

9 Dated: _____

By: _____

Ronald W. Makarem

Samuel Almon

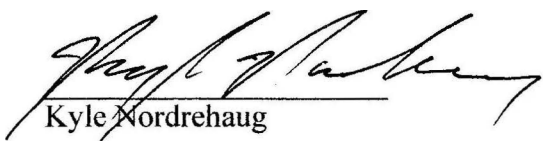
Daniel J. Bass

Counsel for Plaintiffs

13 Dated: March 20, 2024

BLUMENTHAL NORDREHAUG BHOWMIK DE
14 BLOUW LLP

15 By: _____


16 Kyle Nordrehaug

18 Dated: _____

JAMES HAWKINS APLC

20 By: _____

James R. Hawkins, Esq.

Gregory Mauro, Esq.

Michael Calvo, Esq.

Jeanne Sarmiento, Esq.

24 MORGAN, LEWIS & BOCKIUS LLP

25 Dated: _____

By: _____

Brian D. Berry

Sarah Zenewicz

J.P. Schreiber

Ashlee Cherry

Attorneys for Defendant

1 DATED: _____, 2023

Andrew D. Tappin

2 TFORCE FREIGHT, INC. (F/K/A UPS GROUND
3 FREIGHT, INC.)

4 DATED: _____, 2023

By: _____

Its: _____

6
7 **APPROVED AS TO FORM:**

MAKAREM & ASSOCIATES, APLC

8
9 Dated: 03 / 20 / 2024

By: _____

Ronald W. Makarem

Samuel Almon

Daniel J. Bass

Counsel for Plaintiffs

12
13 Dated: _____

BLUMENTHAL NORDREHAUG BHOWMIK DE
14 BLOUW LLP

By: _____

Norman B. Blumenthal

Kyle R. Nordrehaug

Aprajit Bhowmik

Nicholas J. De Blouw

18
19 Dated: _____

JAMES HAWKINS APLC

By: _____

James R. Hawkins, Esq.

Gregory Mauro, Esq.

Michael Calvo, Esq.

Jeanne Sarmiento, Esq.

24 MORGAN, LEWIS & BOCKIUS LLP

25 Dated: _____

By: _____

Brian D. Berry

Sarah Zenewicz

J.P. Schreiber

Ashlee Cherry

Attorneys for Defendant

1 DATED: 3/12/2024, 2023

DocuSigned by:
Andrew Tappin
Anc 48C50C89C2774E9...

2
3 TFORCE FREIGHT, INC. (F/K/A UPS GROUND
FREIGHT, INC.)

4
5 DATED: _____, 2023

By: _____

Its: _____

6
7 **APPROVED AS TO FORM:**

MAKAREM & ASSOCIATES, APLC

8
9 Dated: _____

By: _____

Ronald W. Makarem

Samuel Almon

Daniel J. Bass

Counsel for Plaintiffs

10
11
12
13 Dated: _____

BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

14
15 By: _____

Norman B. Blumenthal

Kyle R. Nordrehaug

Aprajit Bhowmik

Nicholas J. De Blouw

16
17
18
19 Dated: 3/12/24

JAMES HAWKINS APLC

20
21 By:  _____

James R. Hawkins, Esq.

Gregory Mauro, Esq.

Michael Calvo, Esq.

Jeanne Sarmiento, Esq.

22
23
24 MORGAN, LEWIS & BOCKIUS LLP

25
26 Dated: _____

By: _____

Brian D. Berry

Sarah Zenewicz

J.P. Schreiber

Ashlee Cherry

Attorneys for Defendant

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DATED: _____, 2023

Andrew D. Tappin

TFFORCE FREIGHT, INC. (F/K/A UPS GROUND FREIGHT, INC.)

By: W. J. K. Hill

DATED: _____, 2023

Its: President

APPROVED AS TO FORM:

MAKAREM & ASSOCIATES, APLC

Dated: _____

By: _____

Ronald W. Makarem

Samuel Almon

Daniel J. Bass

Counsel for Plaintiffs

Dated: March 20, 2024

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: Kyle Nordrehaug

Dated: _____

JAMES HAWKINS APLC

By: _____

James R. Hawkins, Esq.

Gregory Mauro, Esq.

Michael Calvo, Esq.

Jeanne Sarmiento, Esq.

MORGAN, LEWIS & BOCKIUS LLP

Dated: April 5, 2024

By: Brian D. Berry

Sarah Zenewicz

J.P. Schreiber

Ashlee Cherry

Attorneys for Defendant

Exhibit 1

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

*Donyeisha Mish, Darnell Lee, Luis Robles, Xochitl Velasco, Victor Gonzalez, and Andrew Tappin
v. TForce Freight, Inc.*

Superior Court of the State of California, County of Sacramento

Case No. 34-2022-00314820

***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 TForce Freight, Inc. (“TForce Freight”) (“Defendant”) for alleged wage and hour violations. The Action is brought by Donyeisha Mish, Darnell Lee, Luis Robles, Xochitl Velasco, Victor Gonzalez, and Andrew Tappin (“Plaintiffs”) and seeks payment of (1) unpaid wages, unreimbursed business expenses, statutory damages, meal period premiums, rest break premiums, and penalties for pay stub and wage violations, interest, and attorneys’ fees, on behalf of a class of non-exempt/hourly employees of TForce Freight (“Settlement Class Members”) who worked in California during the Class Settlement Period (September 13, 2016 through [date of preliminary approval], or the date of the Preliminary Approval, whichever is sooner); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all non-exempt/hourly employees of TForce Freight, who worked in California during the PAGA Settlement Period (May 10, 2020 through [date of preliminary approval]) (“PAGA Members”).

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

[CLASS MEMBER NAME] [ID/CONTROL NUMBER]

Two Parts	Workweeks Worked During Class Period (Class Member); Pay Periods Worked During PAGA Period (Aggrieved Employee)	Your Estimated Share
Individual Class Payment	INSERT (During Class Period)	\$INSERT (Individual Class Payment)
Individual PAGA Payment	INSERT (During PAGA Period)	\$INSERT (Individual PAGA Payment)

Based on Defendant's records, and the Parties' current assumptions, your Individual Class Payment (less withholdings) and your Individual PAGA Payment are shown in the chart above, along with the Eligible Workweeks and Eligible Pay Periods you are credited with working during the Class Settlement Period and PAGA Settlement Period, respectively, according to Defendant's records. 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 Defendant's records you are not eligible for an Individual PAGA Payment under the Settlement because you didn't work during the PAGA Settlement Period.) If you believe you worked more Eligible Workweeks or Eligible Pay Periods during either of the relevant periods, you can submit a challenge by the deadline. 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 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 Plaintiffs and Plaintiffs' attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Settlement Class Members to give up their rights to assert certain claims against Defendant.

If you worked for Defendant during the Class Settlement Period and/or the PAGA Settlement Period, you have a few options as shown in the Chart below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING & PARTICIPATE IN THE SETTLEMENT	If you want to receive your Individual Class Payment, then no further action is required on your part. You will automatically receive your Individual Class Payment from the Administrator if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described below.
OPT-OUT OF THE SETTLEMENT (EXCLUDE YOURSELF) DEADLINE: 	If you don't want to receive your Individual Class Payment and, instead, maintain your right to pursue the claims covered by this Settlement on your own,, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. If you opt-out, you will no longer be a Settlement Class Member, and you will (1) <u>not</u> receive an Individual Settlement Payment, but you will preserve your right to pursue the Released Class Claims described below subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all PAGA Members and the PAGA Members must give up their rights to pursue PAGA Released Claims. See Section 10 of this Notice.
OBJECT TO THE SETTLEMENT DEADLINE: 	All Settlement 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 Plaintiffs who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but every dollar paid to Class

	Counsel and Plaintiffs reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiffs if you think they are unreasonable. See Section 3 of this Notice.
DISPUTE YOUR WORKWEEKS OR PAY PERIODS WORKED DEADLINE: 	If you believe that your number of Eligible Workweeks or Eligible Pay Periods worked listed above is incorrect, you may challenge it. The amount of your Individual Settlement Payment and Individual PAGA Payment (if any) depend on how many weeks you worked during the Settlement Class Period. The number you are credited are shown in the chart on the first page, and are based on Defendant's records. If you disagree with either of these numbers, you must challenge it by the deadline. See Section 4 of this Notice.

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

YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT IT'S NOT REQUIRED	
DATE: TIME: A.M. / P.M.	At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. 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.

1. WHAT IS THE ACTION ABOUT?

Plaintiffs are current and former TForce Freight employees. The Action accuses Defendant of violating California labor laws by failing to pay minimum wages, failing to pay overtime wages, failing to provide compliant meal and rest breaks or pay premiums for non-compliant breaks, failing to pay timely wages during employment or at termination, failing to pay sick pay wages and COVID-19 supplemental sick wages, failing to keep accurate records, failing to provide business expense reimbursements, and failing to provide accurate itemized wage statements, among other things. Based on the same claims, Plaintiffs have also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) ("PAGA").

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

Plaintiffs are represented by attorneys in the Action ("Class Counsel"). See Section 9 below for their contact information.

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

So far, the Court has made no determination whether Defendant or Plaintiffs are correct on the merits. In the meantime, Plaintiffs and Defendant hired an experienced, neutral mediator in an effort to resolve the Action by negotiating to end the case by 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, Plaintiffs and Defendant 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, Defendant does not admit any violations or concede the merit of any claims.

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?

1. Defendant Will Pay \$8,250,000.00 as the Gross Settlement Amount (“Gross Settlement”). Defendant has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement within 15 days of the Settlement’s Effective Date. The Administrator will use the Gross Settlement to pay the Individual Settlement Payments, Individual PAGA Payments, Class Representative Enhancement Awards, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor & Workforce Development Agency (“LWDA”). 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.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiffs 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:
 - A. \$2,750,000.00 (one-third of the Gross Settlement) to Class Counsel for attorneys’ fees and up to \$50,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. \$10,000.00 as Class Representative Enhancement Awards to each Plaintiff (for a total of \$60,000) for filing the Action, working with Class Counsel and representing the Class. A Class Representative Enhancement Award will be the only monies Plaintiffs will receive other than Plaintiffs’ Individual Settlement Payment and any Individual PAGA Payment.
 - C. Up to \$21,000.00 to the Administrator for services administering the Settlement.
 - D. \$165,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the PAGA Members based on their share of Pay Periods Worked during the PAGA Period.

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

3. Net Settlement Distributed to Participating 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 Amount”) by making Individual Settlement Payments to Participating Class Members on a pro rata based on their Eligible Workweeks during the Settlement Class Period.
4. Taxes Owed on Payments to Settlement Class Members. Plaintiffs and Defendant are asking the Court to approve an allocation of thirty three percent (33%) of each Individual Settlement Payment to taxable wages (“Wage Portion”) and sixty seven percent (67%) to unreimbursed expenses, penalties and interest (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay employer payroll taxes it owes on the Wage Portion. 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 Settlement Payments on IRS 1099 Forms.

Although Plaintiffs and Defendant 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.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Settlement 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 will be deposited with the California Controller’s Unclaimed Property Fund in your name.

If the monies represented by your check is sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. 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 the 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 Response Deadline. The Request for Exclusion should be a letter from a Settlement Class Member or his/her representative setting forth the Settlement Class Member’s name, present address, telephone number, and a simple statement requesting exclusion from the Settlement. Excluded Settlement Class Members (i.e., Non-Participating Class Members) will not receive Individual Settlement Payments, but will preserve their rights to personally pursue wage and hour claims against Defendant.

You cannot opt-out of the PAGA portion of the Settlement. 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 Defendant based on the PAGA Period facts alleged in the Action.

7. 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 to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Settlement Class Members will not release any claims against Defendant.
8. Administrator. The Court has appointed a neutral company, CPT Group, Inc. (the “Administrator”) to send this Notice, calculate and make payments, and process Settlement Class Members’ Requests for Exclusion. The Administrator will also decide Settlement Class Member challenges over Eligible Workweeks and Eligible Pay Periods worked, 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.
9. Participating Class Members’ Release. After the Judgment is final and Defendant has fully funded the entire Gross Settlement, 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 Defendant or related entities for wages based on the facts alleged in the Action for the duration of the Class Settlement Period and PAGA Settlement Period, which are resolved by this Settlement.

The Participating Class Members will release TForce Freight, Inc. (formerly known as UPS Ground Freight, Inc.) and the other Released Parties (as defined in the Settlement Agreement) from all claims, rights, demands, liabilities, and causes of action, asserted in any of the complaints filed in the Action, and all claims that could have been asserted in the Action reasonably arising from the same alleged facts and theories in the complaints filed in the Action or the PAGA Actions, or alleged in the PAGA Notices sent by the Plaintiffs to the LWDA, under any federal, state and local laws or the IWC Wage Orders, including claims for (1) unpaid minimum wages; (2) unpaid overtime wages; (3) failure to provide meal periods and pay meal period premiums; (4) failure to provide rest periods and pay rest period premiums; (5) failure to keep accurate records; (6) failure to provide accurate wage statements; (7) failure to indemnify for all necessary business expenses; (8) failure to timely pay wages during employment or at termination; (9) failure to pay and accurately calculate all sick pay wages; (10) failure to provide and accurately calculate COVID-19 supplemental sick pay; (11) violations of California Labor Code sections 201-204, 210, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 248.2, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2802 and 2804; (12) unfair competition based on the same Labor Code violations; and (13) all claims for interest, penalties, attorneys’ fees, costs and any other monetary relief based upon the claims described above and including, but not limited to, pursuant to Labor Code §§ 210, 218.5, 218.6, Code of Civil Procedure § 1021.5, and/or Civil Code §§ 3287(b) and 3289, costs, attorneys' fees, injunctive relief, declaratory relief, or accounting that are based on or related to the alleged Labor Code, Wage Order, and Business & Professions Code violations, that accrue during the Class Settlement Period. In addition, by cashing the check containing their Individual Settlement

Payments, Participating Class Members will be deemed to release all claims under the FLSA that could have been asserted based on the alleged facts and theories alleged in any of the complaints. Except as expressly set forth in 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 Settlement Period.

10. PAGA Members' PAGA Release. After the Court's judgment is final, and Defendant has paid the entire Gross Settlement, all PAGA Members will be barred from asserting PAGA claims against Defendant, whether or not they exclude themselves from the Settlement. This means that all PAGA Members, 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 Defendant or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The PAGA Members' will release the Released Parties from all claims for civil penalties under PAGA asserted in any of the complaints filed in the Action or PAGA Actions, and all claims that could have been asserted in the Action or PAGA Actions based on the same alleged facts and theories in the complaints or in the PAGA Notices sent by the Plaintiffs to the LWDA, including claims for penalties based on violations of the California Labor Code and IWC Wage Orders for (1) unpaid minimum wages; (2) unpaid overtime wages; (3) failure to provide meal periods and pay meal period premiums; (4) failure to provide rest periods and provide rest period premiums; (5) failure to provide accurate wage statements; (6) failure to keep accurate records; (7) failure to indemnify for all necessary business expenses; (8) failure to timely pay wages during employment or at termination; (9) failure to pay and accurately calculate all sick pay wages; (10) failure to provide and accurately calculate COVID-19 supplemental sick pay; and (11) violations of California Labor Code sections 201-204, 210, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 248.2, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 2802 and 2804. The Released PAGA Claims do not include other PAGA claims, claims for wrongful termination, discrimination, unemployment insurance, disability and worker's compensation, and claims outside of the PAGA Settlement Period.

4. HOW WILL MY SETTLEMENT PAYMENT BE CALCULATED??

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Eligible Workweeks worked by all Participating Class Members during the Class Settlement Period, and (b) multiplying the result by the number of Eligible Workweeks worked by each individual Participating Class Member during the Class Settlement Period.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$41,250.00 by the total number of Eligible Pay Periods

Worked by all PAGA Members during the PAGA Settlement Period and (b) multiplying the result by the number of eligible Pay Periods worked by each individual PAGA Member during the PAGA Settlement Period.

3. Workweeks Worked and Pay Period Challenges. The number of Eligible Workweeks you worked during the Class Settlement Period and the number of Eligible Pay Periods you worked during the PAGA Settlement Period, as recorded in Defendant's records, are stated in the first page of this Notice. You have until **INSERT DATE** ("Response Deadline") to challenge the number of Eligible Workweeks or Eligible 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 Defendant's calculation of Eligible Workweeks and Eligible Pay Periods based on Defendant'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 all challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendant's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members and PAGA Members. The Administrator will send, by U.S. mail, a check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) and PAGA Member. The checks will combine the Individual Class Payment and the Individual PAGA Payment.
2. PAGA Members Only. If you opted out of the Class settlement, but qualify as a PAGA Member, then the Administrator will send, by U.S. mail, you a single Individual PAGA Payment check.

Your checks 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 Actions as *Tappin, et al. v. TForce Freight*, and include your identifying information (full name, address, telephone number, approximate dates of employment, and last four digits of your 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. **Send your request to be excluded to the Administrator by **INSERT DATE** (the "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.. At least 16 court days before the **INSERT DATE** Final Approval Hearing, Class Counsel and/or Plaintiffs 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 requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel will send you copies of these documents at no cost to you. You can also access this information from the Court's Clerk's Office.

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 Plaintiffs are too high or too low. **The deadline for sending written objections to the Administrator is **INSERT DATE** (the "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 *Tappin, et al. v. TForce Freight* and include your name, current address, telephone number, and approximate dates of employment for Defendant 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 **INSERT DATE** at **INSERT TIME** in Department 27 of the Sacramento County Superior Court. 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, Plaintiffs, 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. 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 Court's website 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 Defendant and Plaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other

Settlement documents is telephone or send an email to the Administrator using the contact information listed below, or consult the Sacramento County Superior Court website by going to www.saccourt.ca.gov and entering the Case Number for the Action, Case No. 34-2022-00314820. You can also personally review court documents in the Clerk's Office at the Sacramento County Superior Court at the Gordon D. Schaber Courthouse, 720 9th Street, Sacramento, California 95814.

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

The contact information for Class Counsel and the Administrator are below:

<u>Class Counsel:</u>
Ronald W. Makarem, Esq. Samuel Almon, Esq. Daniel J. Bass, Esq. MAKAREM & ASSOCIATES APLC 11601 Wilshire Boulevard, Suite 2440 Los Angeles, California 90025-1760
Norman B. Blumenthal Kyle R. Nordrehaug Aprajit Bhowmik Nicholas J. De Blouw BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP 2255 Calle Clara La Jolla, CA 92037
James R. Hawkins, Esq. Gregory Mauro, Esq. Michael Calvo, Esq. Jeanne Sarmiento, Esq. JAMES HAWKINS APLC 9880 Research Drive, Suite 200 Irvine, CA 92618

<u>Settlement Administrator:</u>
XX Email Address Mailing Address Telephone Number Fax Number

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 should consult the Unclaimed Property Fund for instructions on how to retrieve the funds

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.