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Attorneys for Plaintiff and others similarly situated

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KEITH GUTHRIE, individually, on a
representative basis, and on behalf of
all others similarly situated;

Plaintiff,

vs.

ITS LOGISTICS, LLC, a Delaware
Company, and DOES 1 through 20,
inclusive;

Defendants.

Case No.: 1:21-CV-00729-AWI-EPG
*[Assigned to Hon. Anthony W. Ishii,
U.S. District Judge, Courtroom 2]*

**DECLARATION OF MISTY M.
LAUBY IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing

Date: July 25, 2022
Time: 1:30 pm
Courtroom: 2

Complaint filed: March 9, 2021

I, Misty M. Lauby, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California and the United States District Court Eastern District of California. I am a partner at Lauby, Mankin & Lauby LLP. I represent the Plaintiff in this action and I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I handled the day-to-day litigation in this matter. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement. If called as a witness, I could

1 and would competently testify thereto.

2 **COUNSEL’S EXPERIENCE**

3 2. I have been a member, in good standing, of the State Bar of California
4 since 2006. I am licensed to practice before all courts of the State of California
5 and am admitted to practice in the United States District Court for the Central
6 District of California and have litigated cases in various courts and counties
7 throughout California, including successful briefing and argument in the Court of
8 Appeal.

9 3. I began working as an attorney for Fernandez & Lauby LLP in 2006
10 (Fernandez & Lauby was later renamed to Lauby, Mankin & Lauby LLP). From
11 2006 through March 2018, I worked in the firm’s insurance defense department as
12 the handling attorney in approximately 250-350 complex construction defect
13 litigation matters that I successfully managed and settled on behalf of multiple
14 insurance carrier clients.

15 4. In or around March 2018, I transitioned to handling exclusively
16 employee vs. employer litigation matters.

17 5. Leading up to the transition and continuing through the present, I have
18 taken seriously the responsibility of acquiring expertise in the field by participating
19 in numerous continuing legal education seminars specific to the representation of
20 employees in litigated matters, mediation, and complex litigation, including the
21 following non-exhaustive list:

- 22 a. California Employment Lawyers Association (“CELA”) Wage &
23 Hour Boot Camp in September 2016;
- 24 b. CELA 13th Annual Advanced Wage and Hour Seminar in May
25 2017;
- 26 c. CELA 30th Annual Employment Law Conference in October 2017;
- 27 d. Castle Publications and SheppardMullin Wage and Hour Laws in
28 March 2018;

- e. Bridgeport PAGA Claims 2018 Seminar in March 2018;
- f. California Lawyers Association Labor & Employment Law Section 35th Labor & Employment Law Annual Meeting April 2018;
- g. Bridgeport Class Action Litigation Conference Seminar in April 2018;
- h. Los Angeles County Bar Association 2018 Complex Court Symposium in November 2018;
- i. CELA 15th Annual Advanced Wage & Hour Seminar in May 2019;
- j. CELA 6th Annual Trial College in May-June 2019;
- k. Pepperdine University Strauss Institute for Dispute Resolution – Mediation: The Art of Facilitating Settlement, An Interactive Training Program in June 2019;
- l. CELA 32nd Annual Employment Law Conference in October 2019;
- m. CELA The Ethics of a PAGA Action in May 2020;
- n. CELA Annual Advanced Wage & Hour Update in May 2020;
- o. CELA Demystifying Video/Remote Depositions: A Technical and Legal Workshop in June 2020;
- p. CELA An Epic Problem: Mass Arbitration and Other Strategies for Responding to Class Action Waivers in June 2020;
- q. CELA 9th Annual CELA/Fair Diversity Leadership Summit in June 2020;
- r. CELA AB5 and the Future of Independent Contractors In California in June 2020;
- s. Trojan Horse, LLC – Various Participatory Case Analysis and Trial Advocacy MCLE programs throughout 2020 and 2021;
- t. CELA Advanced Wage & Hour Update in May 2021;

- 1 u. Trial Lawyers University Live in October 2021; and
2 v. CELA Advanced Wage & Hour Update in May 2022.

3 6. The vast majority of my employment cases have been litigated as
4 class actions, representative PAGA actions or a combination of the two.

5 7. I have been the handling attorney on over 30 class action and/or
6 representative PAGA actions. And, on these cases, myself and/or my firm have
7 been appointed Class Counsel on over 14 cases, and have helped recover over
8 \$8,000,000 for my clients, the employees, and the State of California.

9 8. Attached as **Exhibit 1** is a list of 14 resolved and/or settlement class
10 actions, collective actions, and/or PAGA actions that I have handled in the last 4
11 years (note: this list excludes currently active cases and settlements pending
12 approval).

13 **PROCEDURAL HISTORY**

14 9. On about March 5, 2021, Plaintiff submitted a letter to the California
15 Labor and Workforce Development Agency (“LWDA”) for civil penalties under
16 PAGA, which is attached hereto as **Exhibit 2**. The LWDA did not assert
17 jurisdiction over the PAGA claims, so Plaintiff then filed a class and representative
18 action complaint against Defendant in Superior Court, County of Merced, on
19 March 9, 2021, alleging claims for failure to pay minimum and regular wages for
20 all hours worked, including rest and recovery periods under Labor Code section
21 226.2, failure to provide meal and rest breaks, failure to reimburse for business
22 expenses, failure to timely pay final wages, failure to provide accurate itemized
23 wage statements, unfair and unlawful competition, and related claims under the
24 PAGA. On about May 4, 2021, Defendant filed its answer to the Complaint,
25 denying Plaintiff’s claims as without merit and asserting various affirmative
26 defenses. On May 5, 2021, Defendant removed the case to the United States
27 District Court for the Eastern District of California under CAFA. In preparation
28 for the Rule 26 conference, the Parties engaged in a series of meet and confers

1 regarding the merits of the claims and defenses, the scope of class discovery,
2 briefing schedules and other matters. As set forth in the Rule 26 Report, the
3 Parties vigorously disputed the claims and set forth a schedule for class
4 certification and trial. After the Conference, the Parties exchanged initial
5 disclosures and meet and conferred further regarding discovery and depositions.

6 10. In preparation for the Rule 26 conference, the Parties engaged in a
7 series of meet and confers regarding the merits of the claims and defenses, the
8 scope of class discovery, briefing schedules and other matters. As set forth in the
9 Rule 26 Report, the Parties vigorously disputed the claims and set forth a schedule
10 for class certification and trial. After the Conference, the Parties exchanged initial
11 disclosures and meet and conferred further regarding discovery and depositions.

12 11. Although Defendant fully denied the allegations, the Parties agreed to
13 submit the matter to mediation prior to expending substantial time and fees on
14 discovery, out-of-state depositions and the class certification process. In
15 preparation for mediation, the Parties engaged in an extensive informal discovery
16 process where information, correspondence, documents, and legal analysis were
17 exchanged, including procedures, payroll and time keeping records, and evidence
18 relating to the class size. Specifically, Plaintiff requested (1) the total number of
19 class members employed during the class period; (2) the total number of per day
20 drivers during the class period; (3) the total number of class members that
21 separated from their employment since March 9, 2017; (4) the total number of per
22 day drivers that separated from their employment since March 9, 2017; (5) the total
23 number of workweeks worked by class members during the class period; (6) the
24 total number of workweeks worked by per day drivers during the class period; (7)
25 the total number of shifts worked by per day drivers during the class period; (8) the
26 average hour rate of pay for class members paid on an hourly basis during the class
27 period; (9) the average daily rate for per day drivers during the class period; (10)
28 the total number of PAGA class members that performed work for Defendant

1 during the PAGA Period; (11) the total number of per day drivers that performed
2 work for Defendant during the PAGA Period; (12) the total number of workweeks
3 during which the PAGA class members performed work for Defendant during the
4 PAGA Period; (13) the total number of workweeks during which the per day
5 drivers performed work for Defendant during the PAGA Period; (14) the number
6 of PAGA class members that ceased performing work for Defendant during the
7 PAGA Period; (15) the number of per day drivers that ceased performing work for
8 Defendant during the PAGA Period; (16) the total number of pay periods worked
9 by PAGA class members during the PAGA Period; (17) the total number of pay
10 periods worked by per day drivers during the PAGA Period; (18) the total number
11 of wage statements issued to PAGA class members during the PAGA Period; (19)
12 the total number of wage statements issued to per day drivers during the PAGA
13 Period; (20) documents that relate to Plaintiff and/or work performed by Plaintiff
14 during his time spent as a truck driver for Defendant (from January 2017 onward);
15 (21) all versions of rules, policies, and/or procedures in effect during the Class and
16 PAGA Periods for the class members; (22) all employee handbooks, including
17 revisions or addendums thereto, in effect for the class members at any time during
18 the Class and PAGA Periods; (23) all procedures, policies and guidelines on how
19 the class members were required to record their hours worked or clock-in/out for a
20 workday during the Class and PAGA Periods; (24) all procedures, policies and
21 guidelines on the calculation and payment of wages, including hourly
22 compensation, piece-rate, flat-rate, bonus pay, incentives, stop pay, any other
23 compensated activities (including chaining, clean inspection incentives, layover
24 pay, detention pay, breakdown pay, post-accident activities, safety meetings, and
25 rest breaks) and all other forms of compensation in effect for the class members
26 during the Class and PAGA Periods; (25) all procedures, policies and guidelines on
27 rest periods applicable to the class members at any time during the Class and
28 PAGA Periods; (26) all procedures, policies and guidelines on expense

1 reimbursement applicable to the Class Members at any time during the Class and
2 PAGA Periods. Defendant also provided Plaintiff with a sampling of timekeeping
3 and payroll records amounting to nearly 2,000 trips driven by the drivers. The
4 informal exchange enabled Plaintiff and his expert to take a deep look into the
5 validity of the claims and Defendant's defenses, enabling Plaintiff's counsel the
6 ability to analyze, research, and investigate the potential claims of all similarly
7 situated employees.

8 12. Defendant provided data for the class period beginning on March 1,
9 2019, which was truncated due to a previous class release in the matter of *Michael*
10 *Caufield, et al. v. ITS Logistics, LLC*, Superior Court of the State of California for
11 the County of San Diego, Case No. 37-2016-00044111-CU-OE-CTL. The data
12 provided included the number of drivers, average hourly and daily rates of pay,
13 total weeks worked at each rate, number of former drivers and estimated number of
14 shifts worked during the class and PAGA periods.

15 13. On March 8, 2022, Plaintiff and Defendants participated in an all-day
16 mediation Hon. Michael Marcus (Ret.). The matter resolved at mediation for
17 \$350,000 pursuant to a mediator's proposal, and the Parties entered into a
18 Memorandum of Understanding. Thereafter, the Parties memorialized the terms of
19 the settlement in a long-form Settlement Agreement, which was negotiated
20 following the mediation. Attached hereto as **Exhibit 3** is a copy of the executed
21 long-form Settlement Agreement.

22 **THE SETTLEMENT IS FAIR, JUST AND REASONABLE**

23 14. Plaintiff contends that the strongest claim was for wage statement
24 violations, based on the allegation that Defendant failed to include all information
25 required by Labor Code § 226(a). My office calculated the maximum potential
26 value of this claim as \$306,900 under the \$50/\$100 formula in § 226(e). In
27 addition to the defenses set forth above, Defendant raised further defenses,
28 including that: (a) these violations, if any, did not result in any "injury" under

§ 226(e), (b) the violations, if any, were not “knowing and intentional” and could not support the assessment of penalties, and (c) “derivative” wage statement claims are without merit. As a result of the defenses, Plaintiff assigned a 50% risk adjustment and calculated the value of damages to be \$153,450.

15. Next, Plaintiff alleges that Defendant employed two violative policies: (1) failure to pay all wages due, including stop pay per contract of \$12.50 per stop, and (2) unpaid rest period wages. My office calculated the maximum potential value of the stop pay claims to be \$1,184,625 estimating a total of 6 stops per day per driver and a maximum value of \$126,360 for unpaid rest wages at approximately \$40 per the 3,159 workweeks for a total maximum unpaid wage claims of \$1,310,985. At mediation, Defendant argued that this claim could not be certified due to the individualized nature of the proof regarding the number of stops each driver took and that the number estimated by Plaintiff was far too high since many drivers did not take 6 stops per day. Moreover, Defendant maintained that despite any policy documents allowing for rest breaks, California rest break requirements were nullified by the FMCSA’s determination that such requirements were preempted by federal law. After applying appropriate discounts relating to Defendant’s arguments at the class certification stage and on the merits, we estimated the risk-adjusted value of the unpaid wage claims to be \$296,156.25 for stop pay claims (75% discount) and \$31,590 for unpaid rest wages (75% discount) for a total of approximately \$327,746.25.

16. Plaintiff also alleged failure to provide meal and rest break claims against Defendant. However, on January 15, 2021, the United States Court of Appeals for the Ninth Circuit unanimously upheld FMCSA's December 2018 determination that California meal and rest break laws are preempted by federal law, as applied to drivers involved in interstate commerce and subject to federal regulation. See *Int'l Brotherhood of Teamsters*, 986 F.3d at 854. As a result, we addressed the rest break damages as unpaid wages (above) and determined that

1 because meal periods are unpaid, there were no damages attached to any potential
2 claims even if required under contract. Accordingly, we did not assign any value
3 to the meal period claims.

4 17. Plaintiff further alleged that Defendant failed to reimburse Plaintiff
5 and the Class despite having a written policy requiring its employees to provide
6 their own cell phones for work purposes. My office estimated the maximum
7 damages at \$10 per 3,195 workweeks for a total of \$31,590. Defendant raised
8 defenses to this claim that including that in 2021, Defendant issued an interoffice
9 memo that told drivers they were no longer required to provide a cell phone for
10 work. Consequently, we assigned a 50% risk adjustment to this claim for a total
11 value of \$15,795.

12 18. Plaintiff also alleges that Defendant failed to timely pay all wages
13 owed to the Class Members upon separation of employment. Based on this theory
14 of liability, Plaintiff calculated the maximum waiting time penalties to be
15 \$1,252,524 (124 former flat daily rate drivers since March 1, 2019 x \$336.70
16 average flat daily rate x 30). However, Defendant argued that its defenses to the
17 unpaid wages and Section 2802 also apply to the derivative Section 203 claim, that
18 any underpayment of wages was not “willful” and/or that Defendant had a good
19 faith defense to imposition of waiting time penalties. While Plaintiff was confident
20 this claim is viable, Plaintiff gave a 75% discount as with the failure to pay wages
21 claim and a 15% discount reflecting the good faith defense for a risk-adjusted
22 value of \$125,252.40.

23 19. Finally, as set forth above, Plaintiff’s UCL claims value lies in the
24 restitution of wages as the only monetary remedy available. Because unpaid wages
25 are already accounted for in the wage claims, any additional value of this claim
26 would lie entirely in the extension of the statute of limitations. However, the class
27 release in *Caufield* limits the class period in this matter to March 1, 2019. As a
28 result, the UCL claim is assigned no value.

20. In sum when factoring in defenses and risks of ongoing litigation, Plaintiff estimates the risk-adjusted class recovery as follows:

• Wage Statements:	\$ 153,450.00
• Wages, including Rest:	\$ 327,746.25
• Meal/Rest Period Claims:	\$ 0
• 2802 Claims:	\$ 15,795.00
• Labor Code §§ 201 - 203 Claims:	\$ 125,252.40
• UCL Claims:	\$ 0
• <u>TOTAL RISK-ADJUSTED PENALTIES AND DAMAGES:</u>	\$ 622,243.65

21. Plaintiff also sought PAGA penalties for each violation for which they are available and alleged that these penalties can be "stacked." See *Gonzalez v. Corecivic of Tennessee, LLC*, No. 1:16-cv-01891-DAD-JLT, 2018 WL 4388425 (E.D. Cal. Sept. 12, 2018) ("stacking' PAGA penalties is not inappropriate under California law"). Assuming that a PAGA penalty is available in the default amount of \$100 per pay period and is not reduced, the maximum potential PAGA penalty would be \$188,500 per viable PAGA claim for the 1885 pay periods in the PAGA period. See Cal. Lab. Code. § 2699(f)(2);

Here, Plaintiff calculates the PAGA penalties as follows:

• Wage Statements	\$188,500
• Unpaid wage claims	\$188,500
• Meal and Rest	\$ 0
• 204 Claims	\$188,500
• 203 Claims (124 x \$100)	\$ 12,400
• Business Expenses	<u>\$188,500</u>
TOTAL	\$766,400

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1 22. However, this figure fails to account for numerous unclear issues
2 relating to PAGA claims. First, it is unclear whether stacking is permissible and/or
3 whether the court would award penalties in such a way (especially for purely
4 derivative penalties such as 203 and 204 claims). Second, the maximum figure
5 fails to acknowledge that courts have wide latitude to reduce the amount of civil
6 penalties “based on the facts and circumstances of a particular case” and if “to do
7 otherwise would result in an award that is unjust, arbitrary and oppressive, or
8 confiscatory.” Labor Code § 2699(h); *Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030,
9 1037 (N.D. Cal. 2016) (noting in the context of approving settlement that a
10 reduction in PAGA penalties would be “appropriate” based on the “unjust,
11 arbitrary and oppressive, or confiscatory” factors because (i) the employer did not
12 “deliberately evad[e] a clear obligation to provide legally required pay and benefits
13 to employees,” (ii) the employer did not “negligently fail to learn about its
14 obligations under the wage and hour laws,” and (iii) the employer’s obligations
15 were “genuinely unclear” because “there is no straight answer to the question.”).

16 23. Plaintiff is also cognizant of the risks facing PAGA claims in federal
17 court, including the myriad of cases holding that PAGA claims do not satisfy
18 constitutional standing requirements. See, e.g., *Raphael v. Tesoro Ref. & Mktg.*
19 *Co. LLC*, No. 2:15-CV-02862-ODW, 2015 WL 5680310 at *2 (C.D. Cal. Sept. 25,
20 2015) (PAGA claim lacked constitutional standing because “[a]lthough PAGA
21 authorizes representative actions, California state law cannot alter federal
22 procedural and jurisdictional requirements”).

23 24. Taking into consideration all defenses raised and the potential for
24 reduction, the risk adjusted value of PAGA claims is \$191,600 (75% reduction).

25 25. Taken together, the total risk adjusted value of the class claims and
26 the PAGA claims is \$813,843.65. The reasonableness of the settlement is apparent
27 from the fact that the proposed settlement binds Defendant to pay approximately
28 43% of the risk-adjusted class damages and PAGA penalties. Given the realistic

1 value of Plaintiff's claims, the \$350,000 settlement is an excellent result for the
2 Class.

3 26. The Settlement was reached after informed, arm's length negotiations
4 between the parties. Both parties conducted extensive investigation allowing them
5 to assess the strengths and weaknesses of the case, including Defendant providing
6 informal discovery and documents in preparation for mediation, including payroll
7 data, time records, and policies and practices for Defendant's compensation
8 systems for the Class, and a sampling of timekeeping and payroll records.

9 27. The parties participated in mediation with a highly experienced
10 mediator, who is also a retired judge, and the settlement was eventually reached at
11 the amount proposed by Judge Marcus.

12 SETTLEMENT ADMINISTRATOR

13 28. The parties request that the Court appoint ILYM Group as the
14 Settlement Administrator. ILYM Group is experienced in administering class
15 action settlements, and has provided a proposal to administer this settlement for a
16 total of \$7,500.

17 SUBMISSION TO THE LWDA

18 29. Plaintiff has concurrently submitted the settlement to the LWDA in
19 accordance with Labor Code §2699(1)(2). The proof of Submission is attached
20 hereto as **Exhibit 4**.

21 CONCLUSION

22 30. For the foregoing reasons, and those set forth in the motion and
23 declaration of Mr. Mankin and Ms. Lauby, it is respectfully requested that the
24 Court grant preliminary approval of the settlement as being fair, reasonable, and in
25 the best interests of the class, as well as preliminarily approve the requested
26 attorneys' fees, costs, and enhancement payment to the Class Representative.

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1 I declare under penalty of perjury under the laws of the State of California
2 that the foregoing is true and correct. Executed on June 15, 2022, at Riverside,
3 California.

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5 By: /s/ Misty M. Lauby
6 Misty M. Lauby, Esq.
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EXHIBIT “1”

Completed Class/Collective/PAGA Cases		
Case Name	Venue	Case Number
Castelo v. Millemiaero	San Bernardino	CIVDS1825783
Constante v. Eddie's Trucking	San Bernardino	CIVDS1902466
Gallardo v. Tee For 2	San Bernardino	CIVDS1719564
Garcia v. Coach	USDC	5:18-cv-01537
Garcia v. Harkins	USDC	5:18-cv-02314
Legorreta v. Paradise	Riverside	RIC1723591
Lepe v. Big Lots	San Bernardino	CIVDS1825693
Lupercio v. Access Exterminator	San Bernardino	CIVDS1921036
McCulloch v. The Gill	Los Angeles	BC722742
Redman v. Zenith	San Bernardino	CIVDS1826759
Ruiz v. Unity Courier	Los Angeles	BC724435
Palmer v. Charter Hospice	San Bernardino	CIVDS2013037
Moreno v. JJ Kane	Riverside	CVRI2101236
Robertson v. All Care Home Health	Los Angeles	20STCV18318

EXHIBIT “2”



LAUBY, MANKIN & LAUBY LLP

March 5, 2021

Sent Via Online Filing to the LWDA

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

Sent Via U.S. Mail and Certified Mail

ITS Logistics, LLC
555 Vista Boulevard
Sparks, NV 89434

Re: PAGA Civil Penalty Claim
Keith Guthrie v. ITS Logistics, LLC, et al.

To the Labor and Workforce Development Agency, ITS Logistics, LLC, Mr. McNally, and all affiliated entities:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Keith Guthrie (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his former employer(s), ITS Logistics, LLC, and/or any affiliated entities (the “Company”), for violations of Labor Code §§ 201, 202, 203, 204, 208, 210, 218.6, 226, 226.2, 150N226.3, 226.7, 256, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, among other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately January 2019 through February 2021 as a truck driver. Claimant alleges that he and all other truck drivers who resided in California and that were employed by the Company (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations to Claimant was subjected during his employment.

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

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company’s policies and practices, Claimant was subjected to meal period violations when Claimant was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a meal period after the 5th hour of work, and (4) not provided a mandated second meal period on occasions for shifts in excess of 10 hours.

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

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

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

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

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

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

PAGA ASSESSMENT FOR FAILURE TO PAY WAGES

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

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

1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages.

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

(Labor Code § 226.2)

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

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

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

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

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

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

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

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

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

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

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

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

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

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

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

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

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

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

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

Furthermore, Labor Code § 226.2(a) states “[f]or employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period: [...] (2) the itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which

the provisions of Section 226 shall also be applicable: (A) the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period [and] (B) [...] the total hours of other nonproductive time, [...] the rate of compensation, and the gross wages paid for that time during the pay period.”

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

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company’s violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS’ FEES, INTEREST, AND PENALTIES

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

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

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

CONCLUSION

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "ms" followed by a stylized flourish.

By: Misty M. Lauby, Esq.

E-mail: Misty@LMLfirm.com

EXHIBIT “3”

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Attorneys for Defendant,
ITS Logistics, LLC

[ADDITIONAL COUNSEL ON FOLLOWING PAGE]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KEITH GUTHRIE, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

ITS LOGISTICS, LLC, a Delaware
Company, and DOES 1 through 20,
inclusive;

Defendants.

Case No.: 1:21-CV-00729-AWI-EPG
[Assigned to Hon. Erica P. Grosjean,
U.S. Magistrate Judge, Courtroom 10]

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

Complaint filed: March 9, 2021

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12 Tel: (312) 255-7200 | Fax: (312) 422-1224

13 Attorneys for Defendant,
14 ITS Logistics, LLC
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1 This Class Action Settlement Agreement and Release of Claims is entered into
2 by and between Plaintiff Keith Guthrie, individually and on behalf of all others
3 similarly situated, and Defendant ITS Logistics, LLC, and is approved by their
4 respective counsel of record, subject to the terms and conditions hereof and the District
5 Court's approval.

6 **A. Definitions**

7 1. "Action" or "Lawsuit" shall mean the case entitled Keith Guthrie v. ITS
8 Logistics, LLC, et al., which was filed in the California Superior District Court, Merced
9 County and removed to the United States District Court for the Eastern District of
10 California as Case No. 1:21-CV-00729-AWI-EPG.

11 2. "Agreement" or "Settlement Agreement" shall mean this Class Action
12 Settlement Agreement and Release of Claims, including any attached Exhibits.

13 3. "Aggrieved Employees" shall mean all current and former truck drivers
14 who resided in California and who were employed by Defendant at any time during the
15 PAGA Period and that Plaintiff alleges were aggrieved. Defendant represents that there
16 are approximately 169 eligible Aggrieved Employees.

17 4. "CAFA Notice" shall mean the notification of Settlement requirements in
18 the Class Action Fairness Act (28 U.S.C. § 1715, "CAFA"), which Defendant will serve
19 on the appropriate federal and state agencies no later than 10 days after Plaintiff files
20 the Motion for Preliminary Approval.

21 5. "Class Counsel" shall mean Brian Mankin and Misty Lauby of Lauby
22 Mankin Lauby LLP.

23 6. "Class and Aggrieved Employee Data" shall mean a complete list that
24 Defendant will diligently and in good faith compile from its records and provide to the
25 Settlement Administrator on one spreadsheet and shall include the Settlement Class
26 Members' full names; last known addresses; telephone numbers; Social Security
27 Numbers; the total Weeks Credited during the Class Period for each Settlement Class
28 Member; and, for those Settlement Class Members who are also Aggrieved Employees,

1 the total PAGA Pay Periods during the PAGA Period

2 7. “Class Period” shall mean March 1, 2019 through May 7, 2022. The
3 beginning date for the Class Period is March 1, 2019 as a result of the release of claims
4 given by the Class Members in *Caufield v. ITS Logistics, LLC*, San Diego Superior
5 Court, No. 37-2016-0044111-CU-OE-CTL, and approved by the court on May 31,
6 2019.

7 8. “Class Representative” or “Plaintiff” shall mean Keith Guthrie.

8 9. “Complaint” shall mean the operative complaint alleging class action and
9 representative PAGA claims, which was filed on March 9, 2021, in the Action (Doc.
10 No. 1-1).

11 10. “District Court” (or “Judge”) shall mean the United States District Court
12 for the Eastern District of California.

13 11. “Defendant” shall mean ITS Logistics, LLC.

14 12. “Defendant’s Counsel” or “Defense Counsel” shall mean Christopher
15 Eckhart and Angela Cash of Scopelitis, Garvin, Light, Hanson & Feary, P.C.

16 13. “Effective Date” shall mean the latest of the following dates: (i) if no
17 Class Member timely and properly objects to the Settlement, then the date the District
18 Court enters an order granting Final Approval of the Settlement; (ii) if a Class Member
19 objects to the Settlement and the objection is not withdrawn, then sixty-one (61)
20 calendar days following the date the District Court enters an order granting final
21 approval, assuming no appeal is filed; or (iii) if a Class Member timely and properly
22 objects to the Settlement, and if a timely appeal is filed, then the date of final resolution
23 of that appeal (including any requests for rehearing and/or petitions for *certiorari*),
24 resulting in final judicial approval of the Settlement. The Parties intend that the
25 Settlement shall not become effective until the Final Approval Order approving the
26 Settlement is completely final and there is no further recourse for an appellant or
27 objector who seeks to contest the Settlement.

28 14. “Final Approval Order” shall mean the order of the District Court granting

1 final approval of this Settlement Agreement, approving this Agreement on substantially
2 the terms provided herein or as the same may be modified by subsequent agreement of
3 the Parties, and entering a final judgment and dismissal of the Action with prejudice.
4 Pursuant to 17 U.S.C. § 1715(d), Final Approval shall occur no earlier than 90 days
5 after Defendant serves the CAFA Notice.

6 15. “Final Settlement Class” shall mean, collectively, all Settlement Class
7 Members who have not opted out of the Settlement Class by submitting timely
8 Requests for Exclusion.

9 16. “Gross Settlement Amount” shall have the meaning ascribed to it in
10 Paragraph 49(a) below.

11 17. “Individual Settlement Payment” shall have the meaning ascribed to it in
12 Paragraph 49(c) below.

13 18. “Net Settlement Amount” shall have the meaning ascribed to it in
14 Paragraph 49(b) below.

15 19. “Notice” shall mean the notice of settlement of class action that will be
16 sent to the Settlement Class Members, as set forth in the form of **Exhibit 1** attached
17 hereto or as otherwise approved by the District Court.

18 20. “Notice Response Deadline” is 45 calendar days from the date the Notice
19 is mailed to the Settlement Class Members.

20 21. “Objecting Settlement Class Member” shall mean a Settlement Class
21 Member, other than Plaintiff, who submits a valid and timely objection to the terms of
22 this Agreement with respect to the Released Class Claims, pursuant to Paragraph 72(c)
23 below.

24 22. “PAGA Pay Periods,” shall mean all pay periods during the PAGA Period
25 in which the Aggrieved Employee was employed by Defendant as a truck driver while
26 residing in California and received pay for that pay period.

27 23. “PAGA Penalties” shall mean the amount that the Parties have agreed to
28 pay to the Labor and Workforce Development Agency (“LWDA”) in connection with

1 the California Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§
2 2698, *et seq.*, “PAGA”), as well as the individual PAGA payment allocated to each
3 Aggrieved Employee as discussed in Paragraph 49(c) below.

4 24. “PAGA Period” shall mean March 9, 2020 through May 7, 2022.

5 25. “PAGA Released Claims” shall mean any and all actual or potential claims
6 for civil penalties under PAGA, that Plaintiff alleged or could have alleged against the
7 Released Parties, on behalf of Aggrieved Employees and the State of California,
8 reasonably arising out of or relating to the facts or claims alleged, in the Complaint and
9 in Plaintiff’s March 5, 2021, notice letter to the LWDA, including all PAGA claims
10 seeking civil penalties, attorneys’ fees and/or interest premised upon: (a) failure to pay
11 minimum and regular wages; (b) failure to pay rest and recovery and other
12 nonproductive time under LC 226.2 and Under Agreement or Contract; (c) failure to
13 provide rest breaks; (d) failure to provide meal breaks; (e) failure to reimburse
14 expenses; (f) failure to timely pay wages each period; (g) failure to timely pay final
15 wages; (h) failure to provide accurate itemized wage statements; and (i) all other claims
16 for civil penalties recoverable under the PAGA based on the facts or claims alleged in
17 the Complaint or in the relevant LWDA notice letter, or arising from alleged violations
18 of California Labor Code §§ 201, 202, 203, 218.6, 226, 226.2, 226.3, 226.7, 512, 558,
19 1194, 1194.2, and 2802. The time period governing the PAGA Released Claims shall
20 be the same as the PAGA Period. The PAGA Released Claims do not release any
21 potential claims for wages or statutory penalties.

22 26. “Participating Class Member” shall mean any and all Settlement Class
23 Members who do not opt-out by submitting a timely and valid Request for Exclusion.

24 27. “Parties” shall mean Plaintiff, the Settlement Class, and Defendant,
25 collectively.

26 28. “Preliminary Approval Date” shall mean the date the District Court
27 preliminarily approves the Settlement Agreement, and the exhibits thereto, and enters
28 the Preliminary Approval Order.

1 29. “Preliminary Approval Order” shall mean the judicial Order to be entered
2 by the District Court, upon the application or motion of the Plaintiff, preliminarily
3 approving this Settlement; providing for the issuance of the Notice to the Settlement
4 Class advising them of their opportunity to opt out of the Settlement or submit timely
5 objections to the Settlement; and setting a hearing to determine the fairness,
6 reasonableness, and adequacy of the Settlement, including approval of attorneys’ fees
7 and costs. Defendant will not object to Plaintiff’s motion for preliminary approval, but
8 will be provided with an opportunity to review and comment upon the motion at least
9 five days before it is filed.

10 30. “QSF” shall mean the Qualified Settlement Fund set up by the Settlement
11 Administrator for the benefit of the Final Settlement Class, and from which the
12 settlement payments shall be made, and which is intended to be a fund that qualifies
13 under 26 C.F.R. § 1.46B.

14 31. “Released Class Claims” by the Participating Class Members upon Final
15 Approval of the Settlement shall mean any and all actual or potential claims, rights,
16 demands, liabilities and causes of action, that were or could have been pled under local,
17 state, or federal law reasonably arising out of or relating to the facts alleged in the
18 Complaint against the Released Parties for the duration of the Class Period, including:
19 (a) failure to pay minimum and regular wages, (b) failure to pay rest and recovery and
20 other nonproductive time under LC 226.2 and under agreement or contract, (c) failure
21 to provide rest breaks; (d) failure to provide meal breaks; (e) failure to reimburse
22 expenses, (f) failure to timely pay wages each period; (g) failure to pay final wages, (h)
23 failure to provide accurate itemized wage statements, (i) unfair and unlawful
24 competition, and (j) all other claims for statutory penalties or interest based on the facts
25 and theories set forth in the Complaint, and based on or arising from alleged violations
26 of California Labor Code §§ 200, 201, 202, 203, 218.6, 226, 226.2, 226.3, 226.7, 512,
27 558, 1194, 1194.2, and 2802, and of the applicable California Wage Order No. 9. The
28 time period governing the Released Class Claims shall be the same as the Class Period.

1 32. “Released Parties” shall mean Defendant and its past and present officers,
2 directors, shareholders, employees, agents, principals, heirs, representatives,
3 accountants, auditors, consultants, insurers and reinsurers, and its respective parent
4 corporations, subsidiaries, divisions, affiliates, attorneys, successors and assigns.

5 33. “Release” shall mean the release and discharge of the Released Class
6 Claims by Plaintiff and all of the Participating Class Members and the release and
7 discharge of the PAGA Released Claims by Plaintiff and all of the Aggrieved
8 Employees. The *res judicata* effect of the judgment will be the same as that of the
9 Release of the Released Class Claims and PAGA Released Claims.

10 34. “Request for Exclusion” shall mean a valid and timely request for
11 exclusion from the Settlement of the Released Class Claims, which may be submitted
12 by any Settlement Class Member, other than Plaintiff, pursuant to Paragraph 72(a)
13 below.

14 35. “Service Payment” or “Service Award” shall mean the amount approved
15 by the District Court to be paid to the Class Representative, Keith Guthrie, in addition
16 to his Individual Settlement Payment as a Participating Class Member.

17 36. “Settlement Administrator” shall mean ILYM Group, the third-party class
18 action settlement administrator agreed to by the Parties, that will provide the Notice
19 Packet to the Class Members and distribute the settlement amounts as described in this
20 Agreement.

21 37. “Settlement Administration Costs” shall mean the costs payable from the
22 Gross Settlement Amount to the Settlement Administrator for administering this
23 Settlement, including, but not limited to, printing, distributing, and tracking documents
24 for this Settlement, tax reporting, and deposit of the employee and employer share of
25 payroll taxes, unclaimed property due diligence, reporting and remittance obligations,
26 distributing the Gross Settlement Amount, and providing necessary reports and
27 declarations, as requested by the Parties. The Settlement Administration Costs shall be
28 paid from the Gross Settlement Amount, including, if necessary, any such costs in

1 excess of the amount represented by the Settlement Administrator as being the
2 maximum costs necessary to administer the Settlement.

3 38. "Settlement Class" shall mean all current and former truck drivers who
4 resided in California and who were employed by Defendant at any time during the
5 Class Period. Defendant represents that there are approximately 276 Class Members.

6 39. "Settlement Class Member" or "Class Member(s)" shall mean an
7 individual member of the Settlement Class.

8 40. "Weeks Credited" in the context of Settlement Class Members, means all
9 weeks in which the driver was paid, in whole or in part, on a mileage or flat rate basis
10 while being employed by Defendant and residing in California.

11 **B. General Terms**

12 41. On March 5, 2021, Plaintiff filed a Notice letter with the LWDA alleging
13 claims under PAGA. The LWDA declined to assert jurisdiction over the PAGA claims.

14 42. Plaintiff then filed a class action and representative action PAGA
15 complaint in the Superior District Court of the State of California for the County of
16 Merced against Defendant and Does 1 through 20, alleging claims for: (a) failure to pay
17 minimum and regular wages for all hours worked, (b) failure to pay for rest and
18 recovery periods under Labor Code section 226.2, (c) failure to provide rest breaks, (d)
19 failure to provide meal periods, (e) failure to reimburse for business expenses, (f)
20 failure to timely pay wages each period; (g) failure to pay final wages, (h) failure to
21 provide accurate itemized wage statements, (i) unfair and unlawful competition, and (j)
22 related claims under PAGA. On about May 4, 2021, Defendant filed its Answer and
23 Affirmative Defenses to the Complaint, denying Plaintiff's claims as without merit and
24 asserting various affirmative defenses. On May 5, 2021, Defendant removed the case to
25 the United States District Court for the Eastern District of California under CAFA (Doc.
26 No. 1).

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

1 action.

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

5 45. The Parties have conducted a thorough investigation into the facts of the
6 Action. This includes conducting an extensive exchange of informal discovery,
7 including Defendant's written policies and practices and the production of payroll and
8 timekeeping records for Settlement Class Members and Aggrieved Employees. Class
9 Counsel is both knowledgeable about and has done extensive research with respect to
10 the applicable law and potential defenses to the claims of the Settlement Class. Class
11 Counsel has diligently pursued an investigation of the Settlement Class Members' and
12 Aggrieved Employees' claims against Defendant. Based on the foregoing data and on
13 their own independent investigation and evaluation, Class Counsel is of the opinion that
14 the settlement with Defendant for the consideration and on the terms set forth in this
15 Settlement Agreement is in the best interest of the Settlement Class Members and
16 Aggrieved Employees in light of all known facts and circumstances, including the risk
17 of significant delay and uncertainty associated with litigation, various defenses asserted
18 by Defendant, and numerous potential appellate issues. Class Counsel and Plaintiff
19 believe that the Settlement is fair, reasonable and adequate, and will so represent same
20 to the District Court.

21 46. On March 8, 2022, Plaintiff and Defendant participated in mediation
22 before the Honorable Michael Marcus (Ret.). The matter resolved at mediation pursuant
23 to a mediator's proposal.

24 47. Non-Admission. Nothing in this Agreement shall be construed to be or
25 deemed an admission by Defendant of any liability, culpability, negligence, or
26 wrongdoing toward Plaintiff, the Settlement Class Members, the Aggrieved Employees,
27 or any other person, and Defendant specifically disclaims any liability, culpability,
28 negligence, or wrongdoing toward Plaintiff, the Settlement Class Members, the

1 Aggrieved Employees, or any other person. Each of the Parties has entered into this
2 Agreement with the intention to avoid further disputes and litigation with the attendant
3 inconvenience, expenses, and contingencies, including the risks and uncertainties
4 inherent in litigation. Nothing herein shall constitute any admission by Defendant of
5 wrongdoing, the truth of any factual allegations in the Action or an admission by
6 Defendant that the Action was properly brought as a class or representative action other
7 than for settlement purposes. To the contrary, Defendant has denied and continues to
8 deny each and every material factual allegation and alleged claim asserted in the Action
9 or that could have been asserted in the Action. To this end, the settlement of the Action,
10 the negotiation and execution of this Agreement, and all acts performed or documents
11 executed pursuant to or in furtherance of this Agreement are not, shall not be deemed to
12 be, and may not be used as, an admission or evidence of any wrongdoing or liability on
13 the part of Defendant or of the truth of any of the factual allegations in the Complaint in
14 the Action; and are not, shall not be deemed to be, and may not be used as, an
15 admission or evidence of any fault or omission on the part of Defendant in any civil,
16 criminal or administrative proceeding in any District Court, administrative agency, or
17 other tribunal.

18 48. Stipulation for Class Certification and Representative Treatment. For
19 settlement purposes only, Defendant will stipulate that the Settlement Class Members
20 described herein who do not submit a Request for Exclusion from the Settlement Class
21 may be conditionally certified as a settlement class and that the Aggrieved Employees
22 are appropriate for representative treatment for purposes of settlement of their PAGA
23 Claims. This stipulation to certification and representative treatment is in no way an
24 admission that class action certification and/or representative treatment is proper and
25 shall not be admissible in this or in any other action except for the sole purposes of
26 enforcing this Agreement. Should, for whatever reason, the District Court fail to issue
27 Final Approval, the Parties' stipulation to class certification and representative
28 treatment as part of the settlement shall become null and void *ab initio* and shall have

no bearing on, and shall not be admissible in connection with, the issue of whether or not certification and/or representative treatment would be appropriate in a non-settlement context. Defendant expressly reserves its rights and declares that it would continue to oppose class certification, representative treatment, and defend the Action based on the substantive merits of the case should the District Court decline to issue Final Approval. Plaintiff expressly reserves his rights and declares that he would continue to pursue class certification, representative treatment, and a trial should the District Court decline to issue Final Approval.

C. Terms of Settlement

49. The financial terms of the settlement are as follows:

a. Gross Settlement Amount: The Parties agree to settle this Action for Three Hundred Fifty Thousand Dollars (\$350,000) (“the Gross Settlement Amount”). The Gross Settlement Amount is the maximum amount that will be paid (other than the employer’s payroll tax obligations discussed below), and includes Individual Settlement Payments, attorneys’ fees, costs, and expenses as approved and awarded by the District Court, the Service Payment to the Class Representative as approved and awarded by the District Court, all Settlement Administration Costs as approved and awarded by the District Court, and PAGA Penalties as approved and awarded by the District Court. Defendant shall separately pay the employer’s share of applicable payroll tax obligations related to the wage portion of the Individual Settlement Payments, which shall be reported and paid through the Settlement Administrator.

b. Net Settlement Amount: The “Net Settlement Amount” is defined as the Gross Settlement Amount less the attorneys’ fees, costs, and expenses as approved and awarded by the District Court, the Service Payment to the Class Representative as approved and awarded by the District Court, the Settlement Administration Costs as approved and awarded by the District Court, and the PAGA Penalties awarded by the District Court. If the District Court reduces the attorneys’ fees, costs, and expenses, Service Payment, or Settlement Administration Costs, or either

1 increases or decreases the amount of the PAGA Penalties, the Net Settlement Amount
2 shall be increased or decreased accordingly.

3 c. Individual Settlement Payments for the Settlement Class: Individual
4 Settlement Payments will be calculated and apportioned from the Net Settlement
5 Amount as follows:

6 i. Each Settlement Class Member will receive a flat amount of
7 \$100.00 (the “Flat Payment”) from the Net Settlement Amount (which is
8 intended to account for all time periods worked in which a driver does not earn
9 Weeks Credited, such as trips paid on an hourly basis);

10 ii. The Settlement Administrator will then calculate the total
11 number of Weeks Credited to each Settlement Class Member during the Class
12 Period and the aggregate total number of Weeks Credited by all Settlement Class
13 Members during the Class Period;

14 iii. The Settlement Administrator will then divide the remainder
15 of the Net Settlement Amount (after subtracting the total of all Flat Payments) by
16 the aggregate total number of Weeks Credited, resulting in the “Per Week
17 Value.” Each Settlement Class Member’s Individual Settlement Payment will be
18 calculated by multiplying his or her total number of Weeks Credited during the
19 Class Period by the Per Week Value and adding that amount to the \$100 Flat
20 Payment.

21 iv. Individual Settlement Payments will be reduced by any
22 required deductions for each Participating Class Member as specifically set forth
23 herein, including employee-side tax withholdings and deductions;
24

25 d. Allocation of Individual Settlement Payments: The Individual
26 Settlement Payments will be allocated based on the allegations in the Action as follows:
27 one-third (33.333%) will be allocated as wages subject to withholding of all applicable
28 local, state and federal taxes; and two-thirds (66.667%) will be allocated for interest,

1 and penalties (pursuant to, e.g., California Labor Code sections 203, 210, 226, 1194,
2 1194.2, 2699, etc.) from which no taxes will be withheld. The Settlement Administrator
3 will issue to each Participating Class Member and Aggrieved Employee an Internal
4 Revenue Service Form W-2 and comparable state forms with respect to the wage
5 allocation and a Form 1099 with respect to the penalties and interest allocations.

6 e. Service Payment to Class Representative: The amount, if any,
7 awarded to the Class Representative as a Service Payment will be set by the District
8 Court in its discretion, not to exceed \$7,500, in exchange for the services Plaintiff
9 performed on behalf of the Settlement Class (including taking steps to support the
10 Settlement) and for entering into the general and expansive release discussed
11 hereinafter. Defendant agrees not to oppose this request if Plaintiff does not request
12 exclusion from the Settlement Class and does not take any action, directly or indirectly,
13 to undercut this Settlement. The Service Payment to Plaintiff will be paid out of the
14 Gross Settlement Amount. The Class Representative will be issued IRS Form 1099 in
15 connection with this payment. Plaintiff shall be solely and legally responsible to pay
16 any and all applicable taxes on this Service Payment. The Parties agree that any amount
17 awarded as the Service Payment to Plaintiff less than the requested amount shall not be
18 a basis for Class Counsel to void this Settlement Agreement nor to appeal this aspect of
19 the District Court's ruling. Should the District Court approve a lesser amount for the
20 Service Payment, the difference shall be part of the Net Settlement Amount to be
21 distributed to the Participating Class Members.

22 f. Attorneys' Fees, Costs, and Expenses Award: Defendant agrees to
23 not oppose a request by Class Counsel to the District Court for an award of attorneys'
24 fees of not more than twenty-five percent (25%) of the Gross Settlement Amount
25 (\$87,500), plus reasonable litigation costs and expenses not to exceed \$15,000.
26 Defendant agrees not to oppose any contention by Class Counsel that attorneys' fees
27 should be based on the common fund theory. The attorneys' fees, costs and expenses
28 approved and awarded by the District Court shall be paid from the Gross Settlement

1 Amount, and except for this award, Defendant shall have no further obligation to pay
2 any attorneys' fees, costs or expenses to Class Counsel. Should the District Court
3 approve a lesser amount than what is sought by Class Counsel, the difference shall be
4 part of the Net Settlement Amount to be distributed to the Participating Class Members.
5 The Parties agree that any amount awarded as attorneys' fees, costs, and expenses to
6 Class Counsel less than the requested amount shall not be a basis for Class Counsel to
7 rescind or otherwise void this Settlement Agreement, and that Plaintiff and Class
8 Counsel waive any right to appeal the District Court's ruling. The Settlement
9 Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount of
10 attorneys' fees, costs and expenses awarded by the District Court.

11 g. Settlement Administration Costs: The fees and other charges of the
12 Settlement Administrator will be paid from the Gross Settlement Amount, and will not
13 exceed \$7,500 unless approved by all Parties and the District Court.

14 h. PAGA Penalties: The Parties agree that \$35,000 is allocated to
15 PAGA Penalties and is to be paid from the Gross Settlement Amount, subject to District
16 Court approval. Of this amount, \$26,250 (75%) shall be paid to the LWDA in
17 satisfaction of civil penalties under PAGA and \$8,750 (25%) will be paid to the
18 Aggrieved Employees on a PAGA Pay Periods basis, which will be treated entirely as
19 civil penalties and shall be reported as required on an IRS Form 1099. Class Counsel
20 shall give proper notice to the LWDA of the Settlement. The formula used to calculate
21 the share of PAGA Penalties payable to the Aggrieved Employees is as follows:

22 (i) The Settlement Administrator will calculate the
23 total number of PAGA Pay Periods by each Aggrieved Employee
24 during the PAGA Period and the aggregate total number of PAGA
25 Pay Periods by each Aggrieved Employee during the PAGA Period;

26 (ii) The Settlement Administrator will then divide
27 the \$8,250 of the PAGA Penalties allocated to the Aggrieved
28 Employees (or such other amount as approved and awarded by the

District Court) by the aggregate total number of PAGA Pay Periods resulting in the “PAGA Per Week Value;”

(iii) The Settlement Administrator will then multiply each Aggrieved Employee’s total number of PAGA Pay Periods during the PAGA Period by the PAGA Per Week Value

i. Distribution of Net Settlement Amount. The entire Net Settlement Amount will be disbursed to all Participating Class Members and Aggrieved Employees. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionally increase the Individual Settlement Payment for each Participating Class Member according to the number of Weeks Credited, so that the amount actually distributed to the Settlement Class and the Aggrieved Employees equals 100% of the Net Settlement Amount.

j. Tax Liability: Class Counsel, Defendant, and Defendant’s counsel make no representations as to the tax treatment or legal effect of the Individual Settlement Payments called for hereunder, and Plaintiff, Participating Class Members, and Aggrieved Employees are not relying on any statement or representation by Class Counsel, Defendant, or Defendant’s counsel in this regard and understand and agree that they will be solely responsible for the payment of any taxes and penalties assessed on their respective Individual Settlement Payments described herein. The amount of federal income tax withholding will be based upon a flat withholding rate for supplemental wage payments in accordance with Treas. Reg. § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be made pursuant to applicable state and/or local withholding codes or regulations. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code of 1986 (the “Code”) and consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other applicable tax law, are changed after the date of this Agreement, the Settlement Administrator will modify the processes set forth in this Section in a manner in compliance with any such changes. Plaintiff, Participating

1 Class Members, and Aggrieved Employees understand and agree that they will be
2 solely responsible for the payment of any taxes and penalties assessed on their
3 respective payments described herein and will hold Defendant harmless from and
4 against any claims resulting from treatment of such payments as non-taxable damages.

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

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

D. Release by Class Representative, the Settlement Class and the Aggrieved Employees

52. Upon entry of the Final Approval Order and Defendant's funding of the Settlement Amount, and except as to such rights or claims as may be created by this Settlement Agreement, the Participating Class Members, for themselves and for their respective spouses, domestic partners, children, estates, heirs, and representatives, will forever completely release and discharge the Released Parties from the Released Class Claims for the Class Period. It is the intent of the Parties that the Final Approval Order and entry of judgment by the District Court shall have full equitable and collateral estoppel and *res judicata* effect and be final and binding upon Participating Class Members regarding the Released Class Claims.

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

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

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

56. Plaintiff and Defendant intend that the settlement described in this Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the Participating Class Members to obtain a recovery based on, arising out of, and/or related to any and all of the Released Class Claims. The Class Members shall be

1 so notified in the Notice. This paragraph only applies to Participating Class Members
2 and, thus, does not apply to any Class Member who timely and validly submits a
3 Request for Exclusion, nor does it apply to Aggrieved Employees with respect to the
4 PAGA Released Claims.

5 57. Plaintiff and Defendant also intend that the settlement described in this
6 Agreement will release and preclude any further PAGA claim, whether by lawsuit,
7 administrative claim or action, arbitration, demand, or other PAGA action of any kind,
8 by each and all of the Aggrieved Employees to obtain a recovery based on, arising out
9 of, and/or related to any and all of the PAGA Released Claims. The Aggrieved
10 Employees shall be so notified in the Notice, and Class Counsel shall provide
11 appropriate notice to the LWDA of this Agreement prior to the filing of the Motion for
12 Preliminary Approval. This section is not intended to preclude any Aggrieved
13 Employee other than Plaintiff from bringing any claim other than a PAGA claim.

14 58. Participating Class Members shall be bound by a limited Civil Code
15 Section 1542 waiver that releases all claims against the Released Parties, whether
16 known or unknown, as to the causes of action stated in the Complaint for: (a) failure to
17 pay minimum and regular wages, (b) failure to pay rest and recovery and other
18 nonproductive time under LC 226.2 and Under Agreement or Contract, (c) failure to
19 provide rest breaks; (d) failure to provide meal breaks; (e) failure to reimburse
20 expenses, (f) failure to timely pay final wages, (g) failure to provide accurate itemized
21 wage statements, and (h) PAGA claims and unfair competition claims premised solely
22 upon the causes of action stated above. All other causes of action are expressly
23 excluded from this limited Civil Code Section 1542 waiver. Section 1542 of the Civil
24 Code of the State of California states:

25 A GENERAL RELEASE DOES NOT EXTEND TO
26 CLAIMS THAT THE CREDITOR OR RELEASING
27 PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN
28 HIS OR HER FAVOR AT THE TIME OF EXECUTING

1 THE RELEASE AND THAT, IF KNOWN BY HIM OR
2 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR
3 HER SETTLEMENT WITH THE DEBTOR OR RELEASED
4 PARTY.

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

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

16 **E. Additional Release by Class Representative**

17 60. In exchange for receipt of a Service Payment approved by the District
18 Court, and in addition to the Class Representative's release of the Released Class
19 Claims and PAGA Released Claims, Class Representative does hereby, for himself and
20 for his respective spouses, domestic partners, marital community, children, estates,
21 attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators,
22 trustees, conservators, guardians, personal representatives, and assigns forever and
23 completely releases and discharges and covenants not to sue the Released Parties with
24 respect to any and all claims, demands, liens, agreements, contracts, covenants, actions,
25 suits, causes of action, wages, obligations, debts, liquidated damages, penalties, interest,
26 costs, expenses, attorneys' fees, damages, judgments, orders and liabilities of whatever
27 kind or nature in law, equity or otherwise, whether now known or unknown, suspected
28 or unsuspected, concealed or hidden, which Plaintiff now owns or holds or has at any

1 time heretofore owned or held as against said Released Parties, or any of them. Such
2 released claims include specifically, but not exclusively and without limiting the
3 generality of the foregoing, any and all claims, demands, agreements, obligations and
4 causes of action, known or unknown, suspected or unsuspected, concealed or hidden,
5 including but not limited to all claims arising out of, based upon, or relating to Class
6 Representative's employment with Defendant or the remuneration for or termination of
7 such employment, as alleged in the operative Complaint, arising out of or in any way
8 connected with any transactions, occurrences, acts or omissions set forth, or facts
9 alleged, in any and all charges, complaints, claims or pleadings filed by Class
10 Representative against any Released Party prior to the date hereof with any city, county,
11 state or federal agency, commission, office or tribunal whatsoever; or arising out of or
12 in any way connected with any transactions, occurrences, acts or omissions occurring
13 prior to the date hereof, including specifically without limiting the generality of the
14 foregoing any claim under Title VII of the Civil Rights Act of 1964, the Civil Rights
15 Act of 1991; the Civil Right Act of 1966, 42 U.S.C. § 1981, the Age Discrimination in
16 Employment Act (29 U.S.C. § 621 *et seq.*), the Americans with Disabilities Act, the
17 Employee Retirement Income Security Act, the National Labor Relations Act, the Fair
18 Labor Standards Act, the Family and Medical Leave Act, the Consolidated Omnibus
19 Budget Reconciliation Act, the Rehabilitation Act of 1973, the California Constitution,
20 the California Labor Code, the California Civil Code, the California Government Code,
21 the California Business & Professions Code, the California Family Rights Act, the
22 California Fair Employment and Housing Act, or any other federal, state, or local
23 statute or regulation and any and all claims based on constitutional, statutory, common
24 law or regulatory grounds as well as any other claims based on theories of wrongful or
25 constructive discharge, breach of contract or implied contract, fraud, misrepresentation,
26 promissory estoppel or intentional and/or negligent infliction of emotional distress, or
27 damages under any other federal, state or local statutes, ordinances, regulations, rules or
28 laws (collectively, the "Class Representative's Claims").

1 61. Class Representative agrees that there is a risk that any injury that he may
2 have suffered by reason of the Released Parties' relationship with him might not now be
3 known, and there is a further risk that said injuries, whether known or unknown at the
4 date of this Settlement Agreement, might possibly become progressively worse, and
5 that as a result thereof further damages may be sustained. Nevertheless, Class
6 Representative agrees to forever and fully release and discharge the Released Parties,
7 and understands that by the execution of this Settlement Agreement no further claims
8 for any such injuries that existed at the time of the execution of this Settlement
9 Agreement may ever be asserted by Class Representative with respect to claims arising
10 in the time period from the beginning of time to the execution of this Settlement
11 Agreement. This release is for any and all relief, no matter how denominated, including,
12 but not limited to, back pay, front pay, vacation pay, bonuses, compensatory damages,
13 tortious damages, liquidated damages, punitive damages, damages for pain and
14 suffering, and attorneys' fees, costs, and expenses, and Plaintiff hereby forever releases,
15 discharges and agrees to hold harmless Defendant and the Released Parties from any
16 and all claims for attorneys' fees, costs, and expenses arising out of the matters released
17 in this Agreement.

18 62. Class Representative expressly waives and relinquishes all rights and
19 benefits afforded by Section 1542 of the Civil Code of the State of California and does
20 so understanding and acknowledging the significance of the waiver of Section 1542.
21 Section 1542 of the Civil Code of the State of California states:

22 A GENERAL RELEASE DOES NOT EXTEND TO
23 CLAIMS THAT THE CREDITOR OR RELEASING
24 PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN
25 HIS OR HER FAVOR AT THE TIME OF EXECUTING
26 THE RELEASE AND THAT, IF KNOWN BY HIM OR
27 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR
28 HER SETTLEMENT WITH THE DEBTOR OR RELEASED

PARTY.

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

F. Interim Stay of Proceedings

63. Pending completion of all of the prerequisites necessary to effectuate this Settlement, the Parties agree, subject to District Court approval, to a stay of all proceedings in the Action except such as are necessary to effectuate the Settlement.

G. Notice, Settlement Administration and Settlement Distribution Process

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

1 65. Disputes Regarding Settlement Administration. Any and all disputes
2 relating to administration of the Settlement by the Settlement Administrator (except for
3 disputes regarding Class and Aggrieved Employee Data) shall be referred to the District
4 Court, if necessary, which will have continuing jurisdiction over the terms and
5 conditions of this Agreement, until Plaintiff and Defendant notify the District Court that
6 all payments and obligations contemplated by this Agreement have been fully carried
7 out. Prior to presenting any issue to the District Court, counsel for the Parties will
8 confer in good faith to resolve the dispute without the necessity of District Court
9 intervention. The Settlement Administrator shall also be responsible for issuing to
10 Plaintiff, Participating Class Members, Aggrieved Employees, and Class Counsel any
11 W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant
12 to this Agreement. The Settlement Administrator shall also be responsible for setting up
13 all necessary tax accounts and forwarding all payroll taxes and penalties to the
14 appropriate government authorities.

15 66. CAFA Notice. Within ten (10) days after filing of the Motion for
16 Preliminary Approval, Defendant shall serve the CAFA Notice as required by law.

17 67. Class and Aggrieved Employee Data. Within twenty-one (21) days after
18 entry of the Preliminary Approval Order, Defendant shall provide the Class and
19 Aggrieved Employee Data to the Settlement Administrator. The Settlement
20 Administrator will run a check of the Settlement Class Members' and Aggrieved
21 Employees' addresses against those on file with the U.S. Postal Service's National
22 Change of Address List. The Class and Aggrieved Employee Data provided to the
23 Settlement Administrator will remain confidential, shall be used solely to administer the
24 settlement, and it will not be used or disclosed to anyone (including Class Counsel),
25 except as required by applicable tax authorities, pursuant to Defendant's express written
26 consent, or by order of the District Court. Although Class Counsel will not be provided
27 with the list of Class and Aggrieved Employee Data, nothing herein shall prevent Class
28 Counsel from communicating with Settlement Class Members or Aggrieved Employees

1 regarding the Action and settlement. The Settlement Administrator will be required to
2 sign and provide to Defendant a Certification Regarding Confidential Discovery
3 Materials Court.

4 68. Notice. The Notice, as approved by the District Court, shall be sent by the
5 Settlement Administrator to the Settlement Class Members and Aggrieved Employees,
6 by first class mail, in English, within ten (10) calendar days following the Settlement
7 Administrator's receipt of the Class and Aggrieved Employee Data. The Settlement
8 Administrator shall use standard devices, including a skip trace, to obtain forwarding
9 addresses of Settlement Class Members/Aggrieved Employees if any envelopes are
10 returned.

11 69. Returned Notices. The Settlement Administrator will take reasonable steps
12 to ensure that the Notice is received by Settlement Class Members/Aggrieved
13 Employees, including utilization of the U.S. Postal Service's National Change of
14 Address List to review the accuracy of and, if possible, update a mailing address.
15 Notices will be re-mailed to any Settlement Class Member/Aggrieved Employee for
16 whom an updated address is located within ten (10) calendar days of Settlement
17 Administrator's receipt of the updated address. The Notice shall be identical to the
18 original Notice, except that it shall notify the Settlement Class Member/Aggrieved
19 Employee that the exclusion (opt-out) request or objection must be returned by the
20 Notice Response Deadline without regard for the date of any remailing of the Notice.

21 70. Disputes Regarding Information on Notices. Class Members are deemed to
22 participate in the settlement, unless they timely opt-out, and Aggrieved Employees may
23 not opt out of the PAGA action. The Notice will inform Settlement Class
24 Members/Aggrieved Employees of his/her estimated Individual Settlement Payment,
25 the number of Weeks Credited to Class Members, and the number of PAGA Pay
26 Periods during the PAGA Period. Settlement Class Members/Aggrieved Employees
27 may dispute their Weeks Credited or PAGA Pay Periods if they feel they should be
28 credited with more than Defendant's records show by timely submitting evidence to the

1 Settlement Administrator. Defendant's records will be presumed determinative absent
2 reliable evidence to rebut Defendant's records, but the Settlement Administrator will
3 evaluate the evidence submitted by the Settlement Class Member/Aggrieved Employee
4 and provide the evidence submitted to Class Counsel and Defense Counsel who agree
5 to meet and confer in good faith about the evidence to determine the Settlement Class
6 Member's actual number of Weeks Credited or the Aggrieved Employee's actual
7 PAGA Pay Periods and the estimated Individual Settlement Payment. If Class Counsel
8 and Defense Counsel are unable to agree, they agree to submit the dispute to the
9 Settlement Administrator to render a final decision. Settlement Class
10 Members/Aggrieved Employees will have until the Notice Response Deadline to
11 dispute Weeks Credited or PAGA Pay Periods, object or opt out, unless extended by the
12 District Court. In the event that the Settlement Administrator increases the number of
13 Weeks Credited for any Settlement Class Member or the Aggrieved Employee's PAGA
14 Pay Periods, then the Settlement Administrator will recalculate the Individual
15 Settlement Payments; accordingly, in no event will Defendant be required to increase
16 the Gross Settlement Amount.

17 71. Parties' Support of Settlement. All Parties, signatories and their counsel
18 shall not encourage opt-outs or objections to this Agreement. The Parties specifically
19 agree not to solicit opt-outs, directly or indirectly, through any means.

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

26 a. Requests for Exclusion from Participating in the Settlement Class.
27 Any Settlement Class Member, other than Plaintiff, may request to be excluded from
28 the Settlement Class by submitting a "Request for Exclusion" to the Settlement

1 Administrator. The Request for Exclusion should state:

2 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT
3 CLASS IN THE ITS LOGISTICS LAWSUIT. I
4 UNDERSTAND THAT IF I ASK TO BE EXCLUDED
5 FROM THE SETTLEMENT CLASS, I WILL NOT
6 RECEIVE ANY MONEY FROM THE SETTLEMENT OF
7 THE CLASS CLAIMS IN THIS LAWSUIT AND WILL
8 NOT BE BOUND BY THE SETTLEMENT."

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

24 b. Binding Effect on Participating Class Members. Except for those
25 Settlement Class Members who exclude themselves in compliance with the procedures
26 set forth above, all Settlement Class Members will: (i) be deemed to be Participating
27 Class Members for all purposes under this Agreement; (ii) will be bound by the terms
28 and conditions of this Agreement, the judgment, and the releases set forth herein; and

(iii) except as otherwise provided herein, will be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the Settlement.

c. Objections to Settlement of the Released Class Claims. Any Settlement Class Member, other than Plaintiff, may object to the terms of this Agreement, except as to the PAGA Released Claims. To object, a Settlement Class Member shall inform the Settlement Administrator, in writing, of his or her objection which must be postmarked by the Notice Response Deadline and mailed to the address set forth in the Notice. Such objection shall include the objecting Settlement Class Member's full name, address, telephone number, and dates of employment with Defendant, the case name and number, the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof, and, if the Objecting Settlement Class Member is represented by counsel, the name and address of his or her counsel. The Settlement Administrator shall provide objections, if any, to Class Counsel and Defense Counsel within three (3) calendar days of receipt, and the Settlement Administrator shall attach the same to its declaration of due diligence to be filed with the District Court prior to the Final Approval Hearing. Any Participating Class Member who files an objection remains eligible to receive monetary compensation from the settlement. If a Settlement Class Member timely submits both an objection and a Request for Exclusion, the objection will be considered invalid. Plaintiff and Defendant shall not be responsible for any fees, costs, or expenses incurred by any Settlement Class Member and/or his or her counsel related to any objections to the settlement.

d. Failure to Object. Any Settlement Class Member who desires to object to the settlement but fails to timely submit a written objection waives any right to object and will be foreclosed from making any objection to this settlement.

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

1 f. Notice to Counsel. The Settlement Administrator shall disclose
2 jointly to Class Counsel and Defendant's Counsel what objections or Requests for
3 Exclusion were timely submitted on a weekly basis, and upon the request of Class
4 Counsel or Defense Counsel.

5 g. Defective Submissions. If a Settlement Class Member's Request for
6 Exclusion or objection is defective as to the requirements listed herein, that Settlement
7 Class Member will be given an opportunity to cure the defect(s). The Settlement
8 Administrator will mail the Settlement Class Member a cure letter within three (3)
9 business days of receiving the defective submission to advise the Settlement Class
10 Member that his or her submission is defective and that the defect must be cured to
11 render the Request for Exclusion or objection valid. The Settlement Class Member will
12 have until the Notice Response Deadline to postmark a revised Request for Exclusion
13 or objection. If the revised Request for Exclusion or objection is not postmarked by the
14 Notice Response Deadline, it will be deemed untimely.

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

26 74. Distribution of Funds. No later than ten (10) calendar days after the deposit
27 of the Gross Settlement Amount into the QSF, the Settlement Administrator will mail
28 the Individual Settlement Payments to the Participating Class Members and/or

1 Aggrieved Employees, the payment to Class Counsel for the attorneys' fees, costs, and
2 expenses, any Service Payment to the Class Representative, the payment to the LWDA
3 for its share of the PAGA Penalties, and will pay itself the Settlement Administration
4 Costs.

5 75. Deadline for Cashing Settlement Checks. Participating Class Members and
6 Aggrieved Employees shall have 180 calendar days after mailing by the Settlement
7 Administrator to cash their settlement checks. If any settlement check is not cashed
8 within that period, the check will be void and a stop-payment will be issued, and the
9 Settlement Administrator shall issue the unclaimed funds to the California State
10 Controller's Office in the name of the Participating Class Member or Aggrieved
11 Employee. Any Participating Class Members or Aggrieved Employees who do not cash
12 their checks within the 180-day period will still be bound by the terms of the
13 Agreement. In the event that any settlement check is returned to the Settlement
14 Administrator within 180 days of mailing, the Settlement Administrator will, within
15 five (5) business days of receipt of the returned settlement check, perform a skip trace
16 to locate the individual, and notify Defense Counsel and Class Counsel of the results. If
17 a new address is located by these means, the Administrator will have ten (10) business
18 days to re-issue the check. Neither Defendant, Defense Counsel, Class Counsel,
19 Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen
20 settlement checks, forged signatures on settlement checks, or unauthorized negotiation
21 of settlement checks. Without limiting the foregoing, in the event a Participating Class
22 Member or Aggrieved Employee notifies the Settlement Administrator that he or she
23 believes that a settlement check has been lost or stolen, the Settlement Administrator
24 shall immediately stop payment on such check and the cost of the stop payment shall be
25 included in the Settlement Administration Costs. If the check in question has not been
26 negotiated prior to the stop payment order, the Settlement Administrator will issue a
27 replacement check.

28 76. No person shall have any claim against Defendant (or the Released

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

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

H. Duties of the Parties Regarding Approval Process

78. Motion for Preliminary Approval. Promptly after execution of this Settlement Agreement, Plaintiff will move the District Court for Preliminary Approval of this settlement and entry of the Preliminary Approval Order accomplishing the following:

a. Scheduling the Final Approval Hearing on the issue of whether this settlement should be finally approved as fair, reasonable and adequate as to the Class Members and a hearing on attorneys' fees, costs and expenses, and the Service Payment;

b. Approving as to form and content the proposed Notice;

c. Directing the mailing of the Notice by first class mail to the Settlement Class Members;

d. Preliminarily approving this settlement; and

e. Preliminarily certifying the class for purposes of this Settlement.

79. Reallocation of Settlement Proceeds. In the event the District Court fails to grant Preliminary or Final Approval of this Agreement because the amount of the PAGA Penalties is not adequate or for any other reason, then the Parties shall cooperate in good faith to reallocate the Gross Settlement Amount or take reasonable steps within

1 this Agreement, in order to try to achieve Preliminary or Final Approval of the
2 Agreement.

3 80. Declaration of Due Diligence. The Settlement Administrator shall provide
4 counsel for the Parties, at least twenty-five (25) calendar days prior to the final approval
5 hearing, a declaration of due diligence and proof of mailing with regard to the mailing
6 of the Notice.

7 81. Motion for Final Approval. In connection with the final approval hearing
8 provided for in this Agreement, Class Counsel shall submit a proposed Final Approval
9 Order:

10 a. Approving the settlement, adjudging the terms thereof to be fair,
11 reasonable and adequate, and directing consummation of its terms and provisions;

12 b. Approving Class Counsel's application for an award of attorneys'
13 fees and reimbursement of litigation costs and expenses, the Service Payment to the
14 Class Representative, the amount of the PAGA Penalties in total and the amount
15 allocated to the LWDA, and the payment to the Settlement Administrator of the
16 Settlement Administration Costs; and

17 c. Entering judgment approving the settlement and dismissing the
18 Action with prejudice, thereby permanently barring all Participating Class Members
19 from prosecuting any Released Class Claims against any of the Released Parties and
20 permanently barring all Aggrieved Employees and the LWDA from prosecuting any
21 PAGA Released Claims against any of the Released Parties.

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

26 **I. Voiding the Agreement**

27 83. In the event that ten percent (10%) or more of the Settlement Class
28 Members opt out of the settlement, Defendant shall have the option to nullify the

1 settlement by giving written notice to the Settlement Administrator and Class Counsel
2 within fifteen (15) days after the Notice Response Deadline.

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

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

10 **J. Miscellaneous Terms**

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

14 87. Full and Complete Defense. This Agreement may be pleaded by any
15 Released Party as a full and complete defense to, and may be used as the basis for an
16 injunction or other affirmative relief against, any action, suit or other proceeding that
17 has been or may be instituted, prosecuted or attempted, asserting any Released Class
18 Claim or PAGA Released Claim.

19 88. Parties' Authority. The signatories hereto represent that they are fully
20 authorized to enter into this Settlement Agreement and bind the Parties hereto to the
21 terms and conditions hereof.

22 89. No Publicity. The Parties will not publicize the settlement or disclose it to
23 third parties, except as required or necessary to effectuate its terms and comply with
24 law, including the payment of taxes. Specifically, Plaintiff and Class Counsel shall not
25 publicize the settlement on their websites, in advertising/marketing materials or on
26 social media. The Parties and their counsel agree that they will not issue any press
27 releases or initiate any contact with the media about the fact, amount, or terms of the
28 settlement. If counsel for any party receives an inquiry about the settlement from the

media, counsel may respond only after the motion for preliminary approval of the settlement has been filed and only by confirming the accurate terms of the settlement. Nothing in this provision shall prevent Defendant from making any required disclosure.

90. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the District Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and Defendant's Counsel, take all necessary steps to secure the District Court's preliminary and final approval of the settlement, and the final entry of judgment. Class Counsel shall provide Defendant's Counsel with copies of the Preliminary Approval Motion and Final Approval Motion for review at least five days prior to their filing deadlines.

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

92. Inadmissibility of Agreement. Whether or not the District Court issues the Final Approval Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into this Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a settlement document, and

1 it, along with all related documents such as the notices, and motions for preliminary and
2 final approval, shall, pursuant to California Evidence Code section 1152 and/or Federal
3 Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an action
4 or proceeding to approve the settlement, and/or interpret or enforce this Settlement
5 Agreement. The stipulation for class certification as part of this Settlement Agreement
6 is for settlement purposes only and if, for any reason the settlement is not approved, the
7 stipulation will be of no force or effect.

8 93. Notices. Unless otherwise specifically provided herein, all notices,
9 demands or other communications given hereunder shall be in writing and shall be
10 deemed to have been duly given as of the third business day after mailing by United
11 States registered or certified mail, return receipt requested, addressed:

12 To the Settlement Class Members and Aggrieved Employees:

13 Brian Mankin
14 brian@LMLfirm.com
15 Lauby Mankin Lauby LLP
16 4590 Allstate Drive
17 Riverside, CA 92501
18 Tel: (951) 320-1444 | Fax: (951) 320-1445

19 To Defendant:

20 Christopher Eckhart
21 ceckhart@scopelitis.com
22 Angela Cash
23 acash@scopelitis.com
24 Scopelitis, Garvin, Light, Hanson & Feary, P.C.
25 10 West Market Street, Suite 1400
26 Indianapolis, IN 46204
27 Tel: (317) 637-1777 | Fax: (317) 687-2414

28 94. Construction. The Parties hereto agree that the terms and conditions of this
Settlement Agreement are the result of lengthy, intensive arms' length negotiations
between the Parties and that this Settlement Agreement shall not be construed in favor
of or against any Party by reason of the extent to which any Party or his or its counsel

1 participated in the drafting of this Settlement Agreement. Plaintiff and Defendant
2 expressly waive the common-law and statutory rule of construction that ambiguities
3 should be construed against the drafter of an agreement and further agree, covenant, and
4 represent that the language in all parts of this Agreement shall be in all cases construed
5 as a whole, according to its fair meaning.

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

10 96. Modification. This Settlement Agreement may not be changed, altered, or
11 modified, except in writing and signed by the Parties hereto, and approved by the
12 District Court. This Settlement Agreement may not be discharged except by
13 performance in accordance with its terms or by a writing signed by all of the Parties
14 hereto.

15 97. Dispute Resolution. Prior to instituting legal action to enforce the
16 provisions of this Agreement or to declare rights and/or obligations under this
17 Agreement, a Party shall provide written notice to the other Party and allow an
18 opportunity to cure the alleged deficiencies, and Plaintiff and Defendant agree to seek
19 the help of the mediator identified in this Agreement or another mutually-agreed upon
20 mediator to resolve any dispute they are unable to resolve informally. During this
21 period, the Parties shall bear their own attorneys' fees and costs. This provision shall
22 not apply to any legal action or other proceeding instituted by any person or entity other
23 than Plaintiff or Defendant.

24 98. District Court Retains Jurisdiction. The Parties agree that upon the entry of
25 judgment pursuant to the terms of this Agreement, the District Court shall retain
26 exclusive and continuing equity jurisdiction of this Action over all Parties to interpret,
27 enforce, and effectuate the terms, conditions, intents and obligations of this Agreement.

28 99. Enforceability. This Agreement is intended by the Parties to be, and shall

1 be, enforceable, binding and admissible in a District Court of law.

2 100. Choice of Law. This Agreement shall be governed by and construed,
3 enforced and administered in accordance with the laws of the State of California.

4 101. Integration Clause. This Agreement contains the entire agreement between
5 the Parties relating to the settlement and transaction contemplated hereby, and all prior
6 or contemporaneous agreements, understandings, representations, and statements,
7 whether oral or written and whether by a Party or such Party's legal counsel, are
8 merged herein. No rights hereunder may be waived except in writing.

9 102. Binding On Assigns. This Agreement shall be binding upon and inure to
10 the benefit of the Parties hereto and their respective heirs, trustees, executors,
11 administrators, successors and assigns.

12 103. Signatures of All Participating Class Members or Aggrieved Employees
13 Unnecessary to be Binding. It is agreed that, because the members of the Settlement
14 Class are numerous, it is impossible or impractical to have each Participating Class
15 Member or Aggrieved Employee execute this Agreement. The Notice will advise all
16 Settlement Class Members of the binding nature of the releases provided herein and
17 such shall have the same force and effect as if this Agreement were executed by each
18 Participating Class Member.

19 104. Invalidity of Any Provision. Before declaring any provision of this
20 Agreement invalid, the District Court will first attempt to construe the provision as
21 valid to the fullest extent possible consistent with applicable precedents so as to define
22 all provisions of this Agreement valid and enforceable.

23 105. Counterparts. This Agreement may be executed in counterparts, and when
24 each Party has signed and delivered at least one such counterpart, each counterpart shall
25 be deemed an original, and, when taken together with other signed counterparts, shall
26 constitute one fully signed Agreement, which shall be binding upon and effective as to
27 all Parties. Electronic signatures shall have the same force and effect as original
28 signatures.

1 Dated: June 14, 2022

PLAINTIFF AND CLASS REPRESENTATIVE:

2 
3 Keith Guthrie (Jun 14, 2022 15:02 PDT)

4 Keith Guthrie

5 Dated: June 14, 2022

CLASS COUNSEL:
LAUBY MANKIN LAUBY LLP

7 

8 Brian J. Mankin
9 Attorneys for Plaintiff

10 Dated: June ___, 2022

DEFENDANT:
ITS LOGISTICS, LLC

13 By:

15 Title:

17 Dated: June ___, 2022

DEFENDANT'S COUNSEL:
SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, P.C

20 Christopher J. Eckhart
21 Angela S. Cash
22 Attorneys for Defendant

23 **END OF DOCUMENT**

1 Dated: June ___, 2022

PLAINTIFF AND CLASS REPRESENTATIVE:

2
3 _____
4 Keith Guthrie

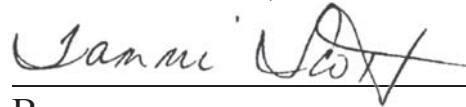
5 Dated: June ___, 2022

CLASS COUNSEL:
LAUBY MANKIN LAUBY LLP

7
8 _____
9 Brian J. Mankin
Attorneys for Plaintiff

10 Dated: June 14, 2022

DEFENDANT:
ITS LOGISTICS, LLC

12
13 

14 By:

Tammi Scott

15 _____
16 Title: Chief Financial Officer

17 Dated: June 14, 2022

DEFENDANT'S COUNSEL:
SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, P.C

19
20 

21 _____
22 Christopher J. Eckhart
Angela S. Cash
Attorneys for Defendant

23
24
25
26
27
28
END OF DOCUMENT

EXHIBIT “4”