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10 Attorneys for ABEL ESCOBEDO and CHRISTOPHER
11 CARVER, on behalf of themselves, all others similarly
12 situated, and on behalf of the general public.

13 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SAN DIEGO**

15 ABEL ESCOBEDO and CHRISTOPHER
16 CARVER on behalf of themselves, all others
17 similarly situated, and on behalf of the general
public,

18 Plaintiff,

19 v.

20 MATHESON TRI-GAS, INC. an unknown
21 business entity; and DOES 1 through 25,
inclusive,

22 Defendants.

Case No. 37-2020-00044507-CU-OE-CTL

**DECLARATION OF DAVID MARA, ESQ. IN
SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: March 3, 2023

Time: 8:30 a.m.

Judge: Hon. Ronald F. Frazier

Dept.: C-65

1 I, DAVID MARA, declare as follows:

- 2 1. I am President of Mara Law Firm, PC and counsel of record for Plaintiffs and the putative class
3 in this matter. I am duly admitted to practice before all the courts of the state of California. The
4 following facts are within my personal knowledge and, if called to testify, I could and would
5 competently testify thereto.
- 6 2. I have been practicing law in California since 2004.
- 7 3. I extensively handle employment cases which involve violations of the California Labor Code
8 and Industrial Welfare Commission Wage Orders, such as wage and hour class actions and cases
9 alleging violations of the Private Attorneys General Act of 2004 ("PAGA").
- 10 4. I was co-class counsel in *Hohnbaum v. Brinker Restaurant Corp.*, San Diego Superior Court
11 Case No. GIC834348, which was the underlying case in the California Supreme Court's
12 landmark decision in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, in
13 which the California Supreme Court delineated the scope of employer obligations to provide, and
14 employee rights to receive, meal and rest periods under California law.
- 15 5. I wrote an Amicus brief on behalf of Consumer Attorneys Of California ("CAOC") in the recent
16 decision by the California Supreme Court in *Augustus v. ABM Security Services, Inc.* (2016) 2
17 Cal.5th 257 (rest breaks must be duty-free and time spent being on call during rest breaks is not
18 considered duty-free).
- 19 6. My firm also wrote an Amicus brief on behalf of CAOC in the recent decision by the California
20 Supreme Court in *Williams v. Superior Court* (2017) 3 Cal. 5th 531 (PAGA and wage and hour
21 class action).
- 22 7. My firm has been granted class certification in both state and federal courts.
- 23 8. I am also Plaintiff's counsel in a host of other class actions involving violations of
24 California's wage and hour laws, many of which involve the transportation industry. For
25 example, I have been and am involved as counsel for plaintiffs in the following class actions
26 involving wage and hour violations under California law: *Davis v. Apria Healthcare Group*
27 (Case No. 37-2015-00007743); *Norona v. B&G Delivery System, Inc.* (Case No. 34-2015-
28 00186826-CU-OE-GDS); *Perez v. City of San Diego* (Case No. 37-2014-00016621); *Cuellar-*
Ramirez v. US Foods, Inc. (Case No. RG15770766); *Peron v. The Vons Companies, Inc.*

(Case No. 37-2014-00006965); *Hilderbrand v. LinkUs Enterprises, LLC* (Case No. DR150155); *Belton v. Pacific Pulmonary Services* (Case No. CGC-15-547564); *Medina v. Central Cal Transportation, Inc.* (Case No. RG15770011); *Dotson v. Asbury Environmental Services* (Case No. 34-2017-00214070-CU-OE-GDS); *Spikes v. Bear Trucking, Inc.* (Case No. CIV17DS1715151); *Montes v. Coram Specialty Infusion Services, Inc.* (Case No. 37-2016-00028950-CU-OE-CTL); *Rodriguez v. Delta Sierra Beverage, LLC* (Case No. 34-2017-00206727); *Clavel v. La Jolla Beach & Tennis Club, Inc.* (Case No. 37-2017-00004802-CU-OE-CTL); *Martin v. Sysco Central California, Inc.* (Case No. 1:16-cv-00990-DAD-SAB).

9. Defendant is a supplier of industrial and specialty gases, and gas handling equipment in the United States. In order to conduct its business, Defendant hires hourly driver employees, such as Plaintiffs and Class Members, to transport these gases and equipment in California.

10. On June 8, 2020, Plaintiff Escobedo sent notice to the California Labor and Workforce Development Agency (“LWDA”) of his intent to pursue various wage and our claims against Defendant on behalf of similarly situated aggrieved employees. Shortly thereafter, Plaintiff Escobedo filed a putative class action complaint on December 4, 2020, against Defendant in the San Diego County Superior Court, Case No. 37-2020-00044507-CU-OE-CTL, alleging causes of action for: (1) Failure to Pay Minimum Wage; (2) Failure to Pay Overtime Wages; (3) Failure to Provide Accurate, Itemized Wage Statements; (4) Failure to Permit Meal Periods; (5) Failure to Permit Rest Periods; (6) Waiting time penalties; (7) Civil Penalties Under the Private Attorney General Act of 2004; and (8) Unlawful Business Practices.

11. On March 4, 2021, Plaintiff Carver sent notice to the LWDA of his intent to pursue various wage and our claims against Defendant on behalf of similarly situated aggrieved employees. Shortly thereafter, Plaintiff Carver filed a putative class action complaint on May 10, 2021, against Defendant in the San Diego County Superior Court, Case No. 37-2021-00020711-CU-OE-CTL, alleging causes of action for: (1) Failure to Pay All Straight Time Wages; (2) Failure to Pay All Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; (6) Failure to Pay All Wages Due at the

1 Time of Termination of Employment; (7) Irregular Pay Periods; (8) Failure to Adopt a
2 Compliant Sick Pay/Paid Time Off Policy; and (9) Violation of Unfair Competition Law.
3 Mara Dec. Plaintiff Carver also filed a separate action alleging identical violations of the
4 California Labor Code and seeking civil penalties under the PAGA on May 10, 2021, against
5 Defendant in the San Diego County Superior Court, Case No. 37-2021-00020726-CU-OE-
6 CTL.

7 12. After agreement amongst the Parties to consolidate the matters, Plaintiffs filed a First
8 Amended Complaint in this matter on or around August 30, 2021, which added the entirety of
9 the claims alleged by Plaintiff Carver in the two other actions. The two actions filed by
10 Plaintiff Carver were then dismissed without prejudice.

11 13. Defendant filed an Answer to the First Amended Complaint on or around October 4, 2021.
12 Defendant denies the allegations of the action in its entirety, deny any liability or wrongdoing
13 of any kind associated with the claims alleged in this action, and further deny that, for any
14 purpose other than settling this action, this matter is appropriate for class treatment. Defendant
15 further contends that they have complied with all applicable California laws, the California
16 Labor Code, the applicable California Wage Order(s), and the Unfair Competition Law.
17 Defendant finally contends that, if this matter were to be litigated further, they would have
18 strong defenses to oppose class certification and succeed on the merits of Plaintiffs' causes of
19 action.

20 14. Through discovery, Plaintiffs sought numerous documents and substantial amounts of data
21 that were needed to evaluate the case. These documents included requests for time and wage
22 records for the Class, policies and practices in place during the class period, employee training
23 in place during the class period, as well as data surrounding the number of current and former
24 employees.

25 15. This discovery, in conjunction with the Parties' meet and confer efforts, resulted in the
26 production of over 10,000 documents and thousands of lines of data, including Defendant's
27 employee policies and practices, and paystubs and time records for Plaintiffs and Class
28 Members. Using the time and wage records for the Class provided and the data surrounding

1 the number of current and former employees, Plaintiffs were able to establish a potential
2 exposure model in preparation for mediation.

3 16. Here, Plaintiffs contend that Class Members were required to perform safety training without
4 compensation from Defendant. The safety training included topics such as transportation of
5 dangerous chemicals, air pollution and other topics related to the transportation industry.
6 Defendant's regular course of business required the drivers to load and distribute dangerous
7 gases (oxygen, chlorine, propane) to businesses throughout their service area. As part of their
8 business model, each driver was required to maintain their safety readiness in order to keep
9 their products moving. As drivers could not perform the tablet training while they were
10 driving for Defendant, they had to complete the training on their own time, after they were
11 already off the clock, which would take several hours to complete each month.

12 17. Defendants argue that beyond the limited accusations of Plaintiffs, there is no evidence that
13 Class Members performed *any* work-related tasks for which they were not compensated, and
14 that Defendants have uniform practices and policies *forbidding* employees from working off
15 the clock. Defendants claim that Plaintiffs' "investigation" is wholly inaccurate, and that the
16 time spent engaging in the above training is grossly inflated by Plaintiffs. Defendants argue
17 that they have tablets and computers at all of their locations where a driver can complete his
18 training, and that they are instructed to accurately log how long it took them so they can be
19 paid for that time.

20 18. Plaintiffs argue that Defendant tells its drivers that they will receive overtime pay anyway
21 when they work over 8 hours in a day or 40 hours in a week, essentially creating an implied
22 contract: "You work for us, we will pay you more then we have to by law." Based on the
23 record sampling produced, Plaintiffs point out that Defendant does, in fact, regularly pay its
24 drivers overtime when they work over 40 hours in a week, and creates clear evidence of an
25 implied contract, or "promise," to pay the drivers overtime. Thus, for all the instances where a
26 driver did work over 8 hours in a day or 40 hours in a week and was not paid overtime,
27 Defendant would be liable for this amount.

28 19. Defendant disputes the entirety of Plaintiffs' argument and the denies that it is liable for any

overtime at all. First, Defendant argues that there is no contract with drivers to pay them overtime at all, and that Plaintiffs cannot point to any written agreement or policy that conveys any such message, nor is there any evidence that this purported “promise” was ever conveyed by Defendant to drivers. Second, simply because Defendant decides in certain limited circumstances to pay its drivers overtime on occasion does not result in the formation of any kind of implied contract. Defendant is not legally obligated to pay its drivers overtime, and it is completely up to Defendant if it decides to do so on occasion. As such, Defendant claims that drivers are being paid *more* than they are legally entitled to, not less.

20. Plaintiffs further contend that Defendant’s wage statements fail to properly itemize the overtime rate and hours worked, making it impossible to promptly and easily determine the correct pay rate with the corresponding hours and pay. Thus, if a Class Member were to add together the hours listed in the line items on their wage statements, the total is incorrect because it exceeds the total number of hours actually worked by the employee during the pay period.

21. Defendant argues that the holding in *Hernandez v. BCI Coca-Cola Bottling Co.* (9th Cir. 2014) 554 Fed. Appx. 661, 662 refutes this argument and is more applicable to the wage statements at issue. In *Hernandez*, the court granted summary judgment in the defendant employer’s favor. Defendants point out that, unlike *McKenzie*, the actual correct number total hours worked are itemized on the wage statements. The *Hernandez* court found that that the plaintiff employee only needed to “subtract his regular hours from total hours to determine overtime hours worked during the pay period.” *Hernandez, supra*, 554 Fed. App. at 662. Just as in *Hernandez*, Defendant contends that Class Members can do the same.

22. The Parties agreed to attend mediation with mediator Jeff Ross, Esq. on July 28, 2022. Shortly thereafter, Mr. Ross issued a mediator’s proposal, which the Parties accepted on August 4, 2022. Since then, the Parties have met and conferred regarding all the terms of the settlement and finalized their agreement in the Parties’ Settlement Agreement. The Parties seek preliminary approval of the Settlement Agreement in the instant motion.

23. In addition to being able to discover the strengths and vulnerabilities associated with

1 Plaintiffs' claims, Defendant provided Plaintiffs with information and data points which
2 Plaintiffs submitted to an expert to establish a representative damage model, as explained
3 below.

4 24. Plaintiffs contend that Defendant has failed to pay Class Members for all hours worked.
5 Defendant required its drivers to undergo monthly safety training. Plaintiffs allege that drivers
6 were subjected to approximately eight (8) hours of training each month. All of this training
7 was done off-the-clock and was uncompensated. Accordingly, Defendant's *maximum*
8 exposure under Plaintiffs' unpaid wages claim is **\$1,270,080** (Approximately 67.5 months
9 during the Class Period x Approximately 84 drivers employed at any given time x \$28
10 average hourly rate x 8 hours per month = \$1,270,080).

11 25. Further, if Plaintiffs were to prevail on their unpaid wages claims, they may also be entitled to
12 waiting time penalties. Plaintiffs calculates the potential *maximum* exposure under the
13 waiting time penalties cause of action as **\$735,840** (73 former employees during the three-
14 year statutory period x \$28.00 average rate of pay x 12-hour average shift length x 30 days =
15 \$735,840).

16 26. Defendant argues that beyond the limited accusations of Plaintiffs, there is no evidence that
17 Class Members performed *any* work-related tasks for which they were not compensated, and
18 that Defendant has uniform practices and policies *forbidding* employees from working off the
19 clock. Defendant claims that Plaintiff's "investigation" is wholly inaccurate, and that the time
20 spent engaging in the safety training takes approximately one (1) hour per month, not eight.
21 Defendants claim that they have tablets and computers at all of their locations where a driver
22 can complete his training, and that they are instructed to accurately log how long it took them
23 so they can be paid for that time. Defendant also contends that individualized issues would
24 predominate because the Court would have to ask each and every class member how long they
25 spent on safety training each month and whether they accurately logged the time it took to
26 complete the training. As Plaintiffs' claims for waiting time penalties are derivative of their
27 wage claims, Defendant argues that it would not be liable for these either. Should the Court
28 agree with Defendant's arguments, Plaintiffs' and class members would be entitled to no

1 recovery under this cause of action.

2 27. Further, Plaintiffs claim that Defendant has entered into an implied contract with Class
3 Members that requires them to pay Class Members overtime when they work over eight (8)
4 hours in a day or forty (40) hours in a week, despite being exempt from overtime under
5 California law. If Plaintiffs were to prevail on their overtime cause of action, employees
6 would be entitled to the overtime premium pay for each hour worked over eight (8) hours in a
7 day or forty (40) hours in a week that was not compensated as overtime. Therefore, the
8 ***maximum potential exposure*** under this theory of liability would be **\$630,631**
9 (Approximately 25,888 workweeks in the Class Period x Approximately 1.74 hours per
10 workweek compensated at the regular rate that Plaintiffs contend should have been
11 compensated as overtime x \$14 average overtime premium wage = \$630,631).

12 28. Plaintiffs' overtime claim is also subject to risks of obtaining certification and on the merits.
13 Defendant asserts that there is no contract with drivers to pay them overtime at all, and that
14 Plaintiffs cannot point to any written agreement or policy that conveys any such message, nor
15 is there any evidence that this purported "promise" was ever conveyed by Defendant to
16 drivers. Further, simply because Defendant decides in certain limited circumstances to pay its
17 drivers overtime on occasion does not result in the formation of any kind of implied contract.
18 Defendant is not legally obligated to pay its drivers overtime, and it is completely up to
19 Defendant if it decides to do so at any given point in time. As such, Defendant claims that
20 drivers are being paid *more* than they are legally entitled to, not less. Defendant also argues
21 that Plaintiffs' would have to ask each driver what purported promises were relayed to them
22 by Defendant in terms of compensation policies and what their understanding was in terms of
23 their rights to be paid overtime. Because each driver would have to testify as to their
24 understanding of Defendant's compensation policies, class certification would be denied for
25 lack of predominance.

26 29. Plaintiffs contend that throughout the liability period, Defendant's wage statements did not
27 contain accurate information regarding hours worked, which could not be easily determined
28 from the wage statements. Given approximately the 6,135 pay periods at issue during the

1 statutory period, Plaintiffs calculate the potential *maximum* exposure under the wage
2 statement cause of action as **\$608,800** [(Approximately 94 drivers received a wage statement
3 during the statutory period x \$50 initial penalty) + (6,041 remaining pay periods x \$100
4 subsequent penalty = \$608,800).

5 30. As noted previously, Defendant argues that its wage statements are complaint under
6 *Hernandez v. BCI Coca-Cola Bottling Co.* (9th Cir. 2014) 554 Fed. Appx. 661, as the actual
7 correct number total hours worked are itemized on the wage statement, permitting Class
8 Members to easily determine the number of hours they worked. If the Court were to agree
9 with Defendant that the analysis from *Hernandez* applies to the wage statements at issue as
10 opposed to the rationale of *McKenzie v. Federal Express Corporation* (2011) 765 F. Supp. 2d
11 1222, Plaintiffs would be unable to recovery any wage statement penalties.

12 31. Plaintiffs allege that Defendant has four (4) violations –failure to pay all time worked, failure
13 to wages at the agreed upon rate, failure to provide accurate, itemized wage statements, and
14 failure to pay all wages twice per month – of the Labor Code sections which give rise to
15 PAGA penalties. The statute of limitations for PAGA violations goes back one year. As there
16 were 7,301 pay periods in the statutory period at the time of mediation, Plaintiffs calculated
17 Defendant’s potential maximum exposure under PAGA as follows:

$$\text{\$100} \times 4 \text{ PAGA violations} \times 7,301 \text{ pay periods} = \text{\$2,920,400}$$

18
19 32. Not taking into account any of their defenses or arguments, Defendant’s total exposure if
20 Plaintiffs were successful in their core claims would be approximately \$2,509,511
21 [\$1,270,080 (unpaid wages exposure) + \$630,631 (overtime exposure) + \$608,800 (wage
22 statement exposure) = \$2,509,511]. If Plaintiffs’ are successful in their unpaid wages claims,
23 they may also be entitled to damages for waiting time penalties in the amount of \$735,840. If
24 all of Plaintiffs’ claims are successful, they may also be entitled to PAGA penalties in the
25 maximum amount of \$2,920,400.

26 33. In light of the risks Plaintiffs’ claims faced, Plaintiffs and their Counsel believe that the
27 settlement amount of \$750,000 – **with an average settlement share amount estimated at**
28 **\$2,382.59** – is a reasonable and fair settlement amount.

1 34. A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit 1**. A true
2 and correct copy of the proposed Class Notice is attached to **Exhibit 1** as **Exhibit A**.

3 35. A true and correct copy of the filing receipt from Plaintiff's upload of their preliminary
4 approval motion and supporting documents to the LWDA's website is attached as **Exhibit 2**.

5 36. A true and correct copy of the confirmation that the upload of Plaintiff's preliminary approval
6 motion was received by the LWDA is attached as **Exhibit 3**.

7 I hereby declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct.

9
10 Dated: February 7, 2023



11
12 _____
David Mara

Exhibit 1

1 **STIPULATED SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

2 **ARTICLE I**

3 **INTRODUCTION**

4 It is stipulated and agreed by and among the undersigned Parties, subject to the approval of
5 the Court pursuant to section 382 of the California Code of Civil Procedure, that the Settlement of
6 this action shall be effectuated upon and subject to the following terms and conditions. Capitalized
7 terms used herein shall have the meanings set forth in the “Definitions” section or as defined
8 elsewhere in this Stipulated Settlement Agreement and Release of Claims (hereafter “Agreement”).

9 Plaintiffs Christopher Carver (“Carver”) and Abel Escobedo (“Escobedo,” and collectively
10 with Carver, “Representative Plaintiffs”) and the putative Class Members make this agreement with
11 Defendant Matheson Tri-Gas, Inc. (“Defendant” or “Matheson”). Representative Plaintiffs and
12 Defendant collectively are referred to in this Agreement as “the Parties.”

13 The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and
14 concluded by agreement of Defendant to pay a non-reversionary all-in settlement in the total
15 maximum amount of \$750,000.00 (Seven-Hundred Fifty Thousand Dollars and Zero Cents) as
16 provided in Section 5.06 below (“Gross Fund Value Amount”) upon the terms and conditions of this
17 Agreement and for the consideration set forth herein, including but not limited to a release of all
18 claims by Representative Plaintiffs and the Class Members as set forth herein.

19 **ARTICLE II**

20 **RECITALS**

21 This Agreement is made in consideration of the following facts:

22 2.1. WHEREAS on June 8, 2020, Escobedo sent a “PAGA Claim of Abel Escobedo” to
23 the California Labor and Workforce Development Agency (the “LWDA”) alleging that while
24 employed by Defendant, Escobedo and other employees had suffered various violations of the
25 California Labor Code;

26 2.2. WHEREAS, on December 4, 2020, Escobedo filed a complaint in the matter of *Abel*
27 *Escobedo v. Matheson Tri-Gas, Inc., et al.*, Case No. 37-2020-00044507-CU-OE-CTL (*Escobedo*) in
28 the Superior Court of California, County of San Diego, alleging the following claims:

- (1) Failure to Pay Minimum Wage;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Provide Accurate, Itemized Wage Statements;
- (4) Failure to Permit Meal Periods;
- (5) Failure to Permit Rest Periods;
- (6) Waiting time penalties;
- (7) Civil Penalties Under the Private Attorney General Act of 2004; and
- (8) Unlawful Business Practices;

2.3. WHEREAS, on March 4, 2021, Carver sent a “Notice of Labor Code Violations Pursuant to Labor Code Section 2699.3” to the LWDA alleging that while employed by Defendant, Carver and other employees had suffered various violations of the California Labor Code;

2.4. WHEREAS, on May 10, 2021, Carver filed a complaint in the matter of *Christopher Carver v. Matheson Tri-Gas, Inc.*, Case No. 37-2021-00020711-CU-OE-CTL (*Carver I*) in the Superior Court of California, County of San Diego, alleging the following claims:

- (1) Failure to Pay All Straight Time Wages;
- (2) Failure to Pay All Overtime Wages;
- (3) Failure to Provide Meal Periods;
- (4) Failure to Authorize and Permit Rest Periods;
- (5) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions;
- (6) Failure to Pay All Wages Due at the Time of Termination of Employment;
- (7) Irregular Pay Periods;
- (8) Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy; and
- (9) Violation of Unfair Competition Law

2.5. WHEREAS, on May 10, 2021, Carver filed a complaint in the matter of *Christopher Carver v. Matheson Tri-Gas, Inc.*, Case No. 37-2021-00020726-CU-OE-CTL (*Carver II*) in the Superior Court of California, County of San Diego, alleging identical violations of the California Labor Code and seeking civil penalties under the PAGA;

1 2.6. WHEREAS, on August 30, 2021, following consolidation of *Escobedo*, *Carver I*, and
2 *Carver II*, Representative Plaintiffs filed a Class Action Complaint for Damages and for PAGA
3 Remedies (hereafter, the “Complaint”).

4 2.7. WHEREAS, the Parties engaged in informal discovery, exchanging information,
5 documents and reviewing and analyzing extensive data made available by Defendant which enabled
6 the parties to thoroughly evaluate Representative Plaintiffs’ claims, the claims of the putative class,
7 Defendant’s defenses, and the likely outcomes, risks and expense of pursuing litigation;

8 2.8. WHEREAS, on July 28, 2022, the Parties attended a mediation session with
9 professional mediator Jeff Ross via Zoom;

10 2.9. WHEREAS, on August 4, 2022, the Parties accepted a mediator’s proposal from Mr.
11 Ross and agreed to settle this action;

12 2.10. WHEREAS, a bona fide dispute exists as to whether any amount of wages or
13 penalties are due from Defendant to any Class Member and/or to the LWDA and/or to any allegedly
14 aggrieved employees;

15 2.11. WHEREAS, the Parties desire to compromise and settle all issues and claims that
16 have been or could have been brought, based on the allegations in the operative Complaint, against
17 Defendant or related persons in the Action, including all claims brought on a putative class,
18 collective and representative basis in the Action;

19 2.12. WHEREAS, based on the discovery exchanged as well as their own independent
20 investigation and evaluation, the Parties have considered the claims asserted by Representative
21 Plaintiffs, the defenses asserted by Defendant, the risks associated with the continued prosecution of
22 the Action, the cost of continued litigation through trial and appeals, and after considering all the
23 circumstances, the Parties have concluded that the proposed settlement set forth in this Agreement is
24 fair, adequate, and reasonable and confers substantial benefits upon the Class Members;

25 2.13. WHEREAS, the Parties further agree that the Agreement, the fact of this Settlement,
26 any of the terms of this Agreement, and any documents filed in connection with the Settlement shall
27 not constitute, or be offered, received, claimed, construed, or deemed as an admission, finding, or
28 evidence of: (i) any wrongdoing by any Released Parties, (ii) any violation of any statute or law by

Released Parties, (iii) any liability on the claims or allegations in the Action on the part of any Released Parties, (iv) any waiver of Defendant's right to arbitration or the enforceability of any arbitration agreement, or (v) the propriety of certifying a litigation class or collective (conditionally or otherwise) or pursuing representative relief under the PAGA in the Action or any other civil or administrative proceeding; and this Agreement shall not be used by any Person for any purpose whatsoever in any administrative or legal proceeding, including but not limited to arbitrations, other than a proceeding to enforce the terms of the Agreement;

2.14. NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO, AND AGREED, by Representative Plaintiffs for themselves and on behalf of the Participating Class Members and by Defendant, that, subject to the approval of the Court, the Action shall be settled, compromised, and dismissed, on the merits and with prejudice, and the Released Class Claims, as defined below, shall be finally and fully compromised, settled and dismissed as to the Released Parties, in the manner and upon the terms and conditions hereafter set forth in this Agreement.

ARTICLE III

DEFINITIONS

As used in the Agreement, the following terms have the meanings specified below:

- a. "Action" means the civil action captioned *Abel Escobedo and Christopher Carver v. Matheson Tri-Gas, Inc., et al.*, Case No. 37-2020-00044507-CU-OE-CTL, as well as the *Escobedo*, *Carver I*, and *Carver II* matters.
- b. "Agreement" means this Stipulated Settlement Agreement And Release Of Claims, including the Class Notice, as defined below, attached as Exhibit A.
- c. "Claims Administrator" means the third-party administrator approved by the court who will administer the settlement as set forth below.
- d. "Claims Administration Costs" means all costs incurred by the Claims Administrator in administration of the Settlement, including, but not limited to address verification measures, mailing of notice to the Class, calculation of Individual Settlement Payments, generation of Individual Settlement Payment checks, administration of uncashed checks, generation of checks to Class Counsel for attorney's fees and costs, generation of the check to the Representative Plaintiffs for

1 their respective Service Awards, generation of a check to the LWDA for its share of PAGA
2 penalties, and generation and submission of all tax-related documents, all pursuant to the terms of
3 this Agreement.

4 e. “Class Claims” means all claims for wages, benefits, and related penalties actually alleged or
5 that could have been alleged in the Action by the Representative Plaintiffs, on behalf of themselves
6 and the California Class Members, based on the facts alleged in the Complaint, including but not
7 limited to: (1) Failure to Pay Minimum and Wage; (2) Failure to Pay Overtime Wages; (3) Failure to
8 Provide Accurate, Itemized Wage Statements; (4) Failure to Permit Meal Periods; (5) Failure to
9 Permit Rest Periods; (6) Waiting Time Penalties; (7) Irregular Pay Periods; (8) Failure to Adopt a
10 Compliant Sick Pay/Paid Time Off Policy; (9) Civil Penalties Under the Private Attorneys General
11 Act (Cal. Lab. Code §2699, *et seq.*); (10) Unlawful business practices; and (11) Attorneys’ Fees and
12 Costs of Litigation associated with this Action. “Class Claims” also includes all claims that the
13 Representative Plaintiffs may have against the Released Parties relating to (i) the payment, taxation
14 and allocation of the Class Counsel Award pursuant to this Settlement Agreement and (ii) the
15 payment, taxation and allocation of Representative Plaintiffs’ Service Awards pursuant to this
16 Settlement Agreement.

17 f. “Class Counsel” means the attorneys for the Class and the Class Members, who are:

18 Arthur R. Botham, Jr.
19 Law Offices of Arthur R. Botham, Jr., A Law Corporation
20 2169 First Avenue
21 San Diego, California 92101
Phone: (619) 358-9738
Fax: (619) 393-0103

22 Zachary T. Tyson
23 Law Office of Zachary T. Tyson ALC
24 2169 First Avenue
San Diego, California 92101
Phone: (619) 237-9292

25 David Mara
26 Matthew Crawford
27 Mara Law Firm, PC
28 2650 Camino Del Rio North, Suite 205
San Diego, CA 92108

1 Phone: (619) 234-2833

2 Fax: (619) 234-4048

3 g. "Class Member(s)" means all non-exempt drivers, truck drivers, truck workers, or similar job
4 designations and titles, and all other similarly situated non-exempt employees of Defendant
5 Matheson Tri-Gas, Inc. employed in the State of California from December 4, 2016 through the date
6 of mediation, July 28, 2022. (which is estimated to consist of approximately 181 current and former
7 employees).

8 h. "Class Notice" means the Notice of Proposed Class Action Settlement attached hereto as
9 Exhibit "A" or in substantially the same form as ultimately approved by the Court.

10 i. "Class Period" means the period from December 4, 2016 through the date of mediation, July
11 28, 2022.

12 j. "Complete and General Release" means an irrevocable and unconditional release given only
13 by Representative Plaintiffs, releasing Defendant and the Released Parties from any and all charges,
14 complaints, claims, causes of action, debts, sums of money, controversies, agreements, promises,
15 damages and liabilities of any kind or nature whatsoever, both at law and equity, known or
16 unknown, suspected or unsuspected, arising from conduct occurring on or before the date
17 Representative Plaintiffs sign this Settlement Agreement, including but not limited to a release of
18 any and all rights Representative Plaintiffs have to sue or bring any type of claim under (a)
19 California state law, the Fair Labor Standards Act; (d) Title VII of the Civil Rights Act of 1964, as
20 amended, 42 U.S.C. § 2000e et seq., (e) the Employment Act of 1967, (f) the Civil Rights Act of
21 1991, (g) the Civil Rights Act of 1866 and 1870, (g) 42 U.S.C. § 1981, as amended, (h) Executive
22 Order 11246, (i) the Americans with Disabilities Act, 42 U.S.C. § 12101, et. seq, as amended, (j) the
23 Family and Medical Leave Act, as amended, (k) the Equal Pay Act of 1963, as amended, (l) the
24 Immigration and Reform Control Act, as amended, (m) the Occupational Safety and Health Act, as
25 amended, (n) the Sarbanes-Oxley Act of 2002, as amended, (o) the Employment Retirement Income
26 Security Act of 1974, as amended (except vested benefits), (p) the Worker Adjustment and Benefit
27 Protection Act of 1990, as amended, (q) the Worker Adjustment and Retraining Notification Act, as
28 amended, (r) any federal, state or common law claim or cause of action based on any alleged failure

1 to pay wages, breach of contract, wrongful discharge, constructive discharge, retaliation, defamation,
2 slander, liable, intentional or negligent infliction of emotional distress, misrepresentation, fraud,
3 promissory estoppel, (s) any other tort or negligence claim or obligations arising out of any of
4 Defendant's employment policies or practices, employee handbooks, and/or any statements by any
5 employee or agent of Defendant whether oral or written; and (t) for reinstatement, back pay, bonus,
6 attorneys' fees, compensatory damages, costs, front pay, any form of equitable or declaratory relief,
7 liquidated damages, emotional distress, personal injury, punitive damages, pain and suffering,
8 medical expenses, damage to reputation, damage for personal, emotional or economic injury or
9 damage of any kind. This provision is intended by the Parties to be all-encompassing and to act as a
10 full and total release of any claim, whether specifically enumerated herein or not, that Representative
11 Plaintiffs might have or have had, that exists or ever has existed on or prior to the date this
12 Settlement Agreement is signed. This release includes a 1542 Waiver. The Parties understand and
13 agree that the word "claims" includes all actions, group actions (including any pending or future
14 collective, class, private attorney general or representative actions for which Representative
15 Plaintiffs may otherwise qualify as a putative class member or represented party), complaints and
16 grievances that could potentially be brought by Representative Plaintiffs against the Released
17 Parties.

18 k. "Defendant" shall mean *Matheson Tri-Gas, Inc.*

19 l. "Defense Counsel" means counsel for Defendant, who are:

20 Lindsay E. Hutner
21 Lindsay.Hutner@gtlaw.com
22 Sam Hyde
23 hydes@gtlaw.com
24 Greenberg Traurig, LLP
25 101 Second Street, Suite 2200
26 San Francisco, CA 94105
27 Telephone: (415) 655-1300
28 Facsimile: (415) 707-2010

m. "Final Effective Date" means the date on which the Settlement is approved and the Court's
Final Order and Judgment becomes Final. The Court's Final Order and Judgment becomes final
upon the later of: (i) if an intervention is granted, but no appeal is filed, the expiration date of the

1 time for the filing or noticing of any appeal from, or other challenge to, the Court's Judgment (this
2 time period shall not be less than 60 calendar days after the Court's Judgment is entered); (ii) if an
3 appeal is filed, the date affirmance of an appeal of the Judgment becomes final under the California
4 Rules; (iii) if an appeal is filed, the date of final dismissal of any appeal from the Judgment or the
5 final dismissal of any proceeding on review of any court of appeal decision relating to the Judgment;
6 (iv) if objections are filed and overruled, and no appeal is taken of the final approval order, then the
7 Effective Date of final approval will be sixty-five (65) days after the trial court enters final approval;
8 or (v) if no intervention is granted and no objections are filed, the date on which the Court grants
9 final approval of this Agreement on substantially the terms provided herein as the same may be
10 modified by subsequent written agreement of the Parties and signs the Final Order granting final
11 approval of this Agreement.

12 n. "Final Fairness and Approval Hearing" means the hearing to determine whether the proposed
13 Agreement settling the Action should be finally approved as fair, reasonable, and adequate; whether
14 the proposed plan of allocation of the Net Fund Value Amount should be approved; whether the
15 Representative Plaintiffs' Service Award should be approved; and whether the applications of Class
16 Counsel for attorney's fees and costs should be approved.

17 o. "Final Order" refers to the order of the Court granting final approval of this Agreement as to
18 the Final Settlement Class (defined below) and entering a judgment approving this Agreement on
19 substantially the terms provided herein or as the same may be modified by subsequent written
20 agreement of the Parties.

21 p. "Final Settlement Class" refers to the Representative Plaintiffs and all Class Members who
22 do not timely and validly exclude themselves from the class in compliance with the exclusion
23 procedures set forth in Section 5.04.a of this Agreement.

24 q. "Gross Fund Value Amount" means the \$750,000.00 (Seven-Hundred Fifty Thousand
25 Dollars and Zero Cents) to be paid by Defendant as provided by this Agreement to settle this Action.
26 This is an "all in" number that includes, without limitation, all monetary benefits and payments for
27 the Final Settlement Class Members, the Service Awards, the Class Counsel Award, the Settlement
28 Administrator expenses and the PAGA Payment, and all other claims for interest, fees, and costs.

1 Other than the employer's share of payroll taxes, in no event will Defendant pay more than the Gross
2 Fund Value Amount.

3 r. "Individual Settlement Payments" means the amounts of money from the Net Fund Value
4 Amount that shall be paid to the Participating Class Members less employee's portion of payroll
5 taxes owed. Individual Settlement Payments shall be each Participating Class Member's share of the
6 Net Fund Value Amount (which share shall be determined by the calculations provided in this
7 Agreement at Section 5.06.c.).

8 s. "Judgment" refers to the judgment entered by the Court in conjunction with the Final Order.

9 t. "LWDA" means the California Labor and Workforce Development Agency.

10 u. "Net Fund Value Amount" means the Gross Fund Value Amount of \$750,000.00 (Seven-
11 Hundred Fifty Thousand Dollars and Zero Cents) less all of the following amounts approved by the
12 Court: (1) Class Counsel's court-approved attorney's fees (not to exceed one-third of the Gross Fund
13 Value Amount, or \$250,000.00 (Two-Hundred Fifty Thousand Dollars and Zero Cents)); (2) Class
14 Counsel's court-approved collective litigation costs (not to exceed Twenty Thousand Dollars
15 (\$20,000.00); (3) the court-approved Service Award to be paid to the Representative Plaintiffs, not
16 to exceed Ten Thousand Dollars (\$10,000.00) each; (4) the amount of court-approved PAGA
17 penalties to be paid to the LWDA (\$18,750.00), representing 75% of the total amount allocated for
18 PAGA Penalties; and (5) the Claims Administrator's court-approved fees in the anticipated amount
19 of not more than Five Thousand Dollars (\$10,000.00). The estimated Net Fund Value Amount is
20 estimated to be \$431,250.00 plus any residuals from amounts requested in this paragraph which are
21 not ultimately distributed to the respective Parties due to invoicing of a lesser amount by the Claims
22 Administrator or court approval of a lesser amount than requested.

23 v. "Non-Participating Class Member(s)" means those Class Members who submit to the Claims
24 Administrator a valid and timely written request to be excluded from the Class pursuant to Section
25 5.04.a below.

26 w. "PAGA" means the Private Attorneys General Act of 2004, California Labor Code sections
27 2698, *et seq.*

- x. “Participating Class Member(s)” means those Class Members who do not submit valid requests for exclusion.
- y. “Parties” means Representative Plaintiffs and Defendant as defined herein.
- z. “Released Parties” means (i) Matheson Tri-Gas, Inc. and its past, present, and future parents, subsidiaries, affiliates, divisions, joint ventures, licensees, franchisees, and any other legal entities, whether foreign or domestic, and (ii) the past, present, and future shareholders, officers, directors, members, investors, agents, employees, consultants, representatives, fiduciaries, insurers, attorneys, legal representatives, predecessors, successors, and assigns of the entities listed in (i).
- aa. “Released Class Claims” means the Class Claims, and if Class Members cash the checks for their Individual Settlement Payments, that the Final Settlement Class Members are fully and irrevocably releasing in exchange for the consideration provided by this Settlement Agreement, whether arising at law, in contract or in equity, and whether for economic or non-economic damages, restitution, injunctive relief, penalties or liquidated damages from December 4, 2016, through the date of mediation, July 28, 2022.
- bb. “Representative Plaintiffs” means named Plaintiffs Abel Escobedo and Christopher Carver.
- cc. “Service Award” means a monetary amount not to exceed Ten Thousand Dollars (\$10,000.00) to each Representative Plaintiff which, subject to Court approval, shall be paid pursuant to Section 5.06.b.3 of the Agreement, as provided below.
- dd. “Settlement” means the disposition of this Action and all related claims effectuated by this Agreement.

ARTICLE IV

CERTIFICATION FOR SETTLEMENT PURPOSES ONLY

4.1. Certification Of Class and Claims. Solely for the purposes of this Settlement, the Parties stipulate and agree that the Court may certify a class consisting of “all non-exempt drivers, truck drivers, truck workers, or similar job designations and titles, and all other similarly situated non-exempt employees of Defendant Matheson Tri-Gas, Inc. employed in the State of California from December 4, 2016 through the date of mediation, July 28, 2022.”

1 4.2. Appointment Of Class Representative. Solely for the purposes of this Settlement, the
2 Parties stipulate and agree Representative Plaintiffs shall be appointed as representative of the Final
3 Settlement Class.

4 4.3. Appointment Of Class Counsel. Solely for the purposes of this Settlement, the Parties
5 stipulate and agree that Class Counsel shall be appointed as counsel for the Final Settlement Class.

6 4.4. Appointment Of Settlement Administrator. Solely for the purposes of this Settlement,
7 the Parties stipulate and agree that Phoenix Class Action Settlement Administration Solutions shall
8 be appointed to serve as Settlement Administrator.

9 4.5. Conditional Nature of Stipulation for Certification. Solely for the purposes of this
10 Settlement, the Parties stipulate and agree to the certification of the Final Settlement Class. Should,
11 for whatever reason, the Settlement not become effective, the fact that the Parties were willing to
12 stipulate to certification as part of the Settlement shall have no bearing on, and shall not be
13 admissible in connection with, the issue of whether the Class Members and/or the Class Claims
14 should be certified in a non-Settlement context in this Action or in any other lawsuit. Defendant
15 expressly reserves its right to oppose claim or class certification in this or any other action should
16 this Settlement not become effective.

17 4.6. Stay Of Proceedings. The Parties agree to stay all proceedings in the Action, except
18 such proceedings necessary to implement and complete the Settlement, pending the Final Approval
19 hearing to be conducted by the Court.

20 4.7. Arbitrability of Claims. The Settlement is not intended to and may not be deemed to
21 affect the enforceability of any arbitration agreement between Defendant and Representative
22 Plaintiffs and/or between Defendant and any Class Member.

23 **ARTICLE V**

24 **PROCEDURE FOR APPROVAL AND IMPLEMENTATION OF SETTLEMENT**

25 Because the Parties have stipulated to the certification of the Class for settlement purposes
26 only, this Agreement requires preliminary and final approval by the Court. Accordingly, as set forth
27 in Section IV, the Parties enter into this Agreement on a conditional basis. This Agreement is
28 contingent upon the approval and certification by the Court. If the Court does not grant either the

1 Preliminary or Final Approval of the settlement, the fact that the Parties were willing to stipulate to
2 class certification for the purposes of this Agreement shall have no bearing on, or be admissible in
3 connection with, the issue of whether any class should be certified in a non-settlement context. If the
4 Final Effective Date does not occur, this Agreement shall be deemed null and void, shall be of no
5 force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever.
6 Defendant expressly reserves the right to challenge the propriety of class certification for any
7 purpose if the settlement does not become final.

8 The Parties and their respective counsel shall take all steps that may be requested by the
9 Court relating to the approval and implementation of this Agreement and shall otherwise use their
10 respective best efforts to obtain Court approval and implement this Agreement. The procedure for
11 obtaining Court approval of and implementing this Agreement shall be as follows.

12 **Section 5.01: Motion for Conditional Class Certification and Preliminary Approval**

13 a. Representative Plaintiffs shall bring a motion before the Court for an order
14 conditionally certifying the Class based on the preliminary approval of this Agreement, including the
15 Class Notice attached hereto as Exhibit "A." The date that the Court grants preliminary approval of
16 this Agreement shall be the "Preliminary Approval Date."

17 b. Representative Plaintiffs shall serve a notice of settlement on the LWDA at the same
18 time they file motion for preliminary approval.

19 c. The Parties stipulate to the form of, and agree to submit to the Court for its
20 consideration, this Settlement Agreement, and the following Exhibits to this Settlement Agreement:
21 the Class Notice (Exhibit A) and a [Proposed] Preliminary Approval Order approved by both Parties.

22 d. The [Proposed] Preliminary Approval Order shall:

- 23 • Conditionally grant class certification;
- 24 • Conditionally appoint Representative Plaintiffs and Class Counsel as
25 representatives of the proposed Class Members;
- 26 • Appoint Phoenix Class Action Administration Solutions as the Settlement
27 Administrator, and order the Settlement Administrator to provide notice of the
28 settlement as outlined below;

- Confirm that the procedure for distributing the Class Notice (discussed below)
 - (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, and their right to exclude himself from or object to the proposed settlement and to appear at the Final Fairness and Approval Hearing; (iii) was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) met all applicable requirements of, due process, and any other applicable rules or law;
- Confirm the notice of settlement served by Representative Plaintiffs on the LWDA satisfies the requirements of the PAGA.
- Impose a stay on all litigation of the Action pending the Final Fairness and Approval Hearing, or Class Members from prosecuting any claims against Defendant or the Released Parties pending the Final Fairness and Approval Hearing unless they have timely opted-out of the settlement; and;
- Order that the preliminary approval of the Settlement, certification of the Class Claims and all actions associated with them, are undertaken on the condition that they shall be vacated if the Settlement Agreement is terminated or disapproved in whole or in material part by the Court (i.e. not including modification of the amount of Attorney's Fees, Attorney's Costs, or Class Representative Enhancement by the Court), or any appellate court and/or other court of review in which event the Settlement Agreement and the fact that it was entered into shall not be offered, received, or construed as an admission or as evidence for any purpose, including but not limited to an admission by any Party of liability or non-liability or of the certifiability of a litigation class or the appropriateness of maintaining a representative action.

Section 5.02: The Claims Administrator

A court-appointed third-party Claims Administrator will serve to administer this Settlement pursuant to the terms herein. The Claims Administrator will administer the settlement by performing

1 address verification for the Class Members, distributing the Class Notice and Reminder Postcards, if
2 necessary, performing skip traces, receiving and recording completed Settlement Opt-Outs,
3 adjudicating Class Members' disputes over workweeks worked during the Class Period in the
4 relevant positions as an hourly and/or non-exempt employee, providing Class Counsel and counsel
5 for Defendant with weekly updates on the status of Opt-Outs, and handling any potential inquiries
6 about the calculation of the Individual Settlement Amounts. The Claims Administrator shall provide
7 the Parties with the names of individuals who submitted timely Opt-Outs after the expiration of the
8 claims period for inclusion in the proposed final approval Order. The actions of the Claims
9 Administrator shall be governed by the terms of this Stipulation. The Parties, through their counsel,
10 may provide written information needed by the Claims Administrator pursuant to the Stipulation.

11 All costs of administering the Settlement, including but not limited to all costs and fees
12 associated with preparing, issuing, and mailing any and all notices to Class Members, all costs and
13 fees associated with computing, processing, reviewing, and mailing the Individual Settlement
14 Payments, all costs and fees associated with preparing any tax returns and any other filings required
15 by any governmental taxing authority or agency, all costs and fees associated with preparing any
16 other notices, reports, or filings to be prepared in the course of administering disbursements from the
17 Net Fund Value Amount, and any other costs and fees incurred and/or charged by the Claims
18 Administrator in connection with the execution of its duties under this Agreement ("Claims
19 Administration Costs"), anticipated to be not more than Ten Thousand Dollars (\$10,000.00), shall be
20 paid out of the Gross Fund Value Amount.

21 **Section 5.03: Notice to Class Members**

22 **a. Initial Identification of Class Members:** Within seven (7) business days following
23 entry of the Preliminary Approval Order, Defendant shall provide to the Claims Administrator a
24 confidential list in Excel spreadsheet format containing the name and last known address, telephone
25 number, and social security number of each Class Member. This list shall also contain the
26 workweeks worked by each individual Class Member as an hourly or non-exempt employee for
27 Defendant during the Class Period and the commencement dates and termination dates (if
28

1 applicable) relating to each individual Class Member during the Class Period. This information shall
2 be treated as confidential.

3 **b. Mailing of Class Notice:** Promptly upon receipt of the Class Member information
4 from Defendant, the Claims Administrator shall attempt to obtain updated addresses for Class
5 Members from the U.S. Postal Service and Accurint. Within fourteen (14) calendar days after receipt
6 of the Class Member information from Defendant, or receipt of any updated addresses from the U.S.
7 Postal Service, whichever is later, the Claims Administrator shall mail the Class Notice to all Class
8 Members via first-class mail using the updated address information. With respect to each Class
9 Notice that is returned as undeliverable, the Claims Administrator shall promptly attempt to
10 determine a correct address using an additional skip trace service such as Experian and shall re-send
11 the Class Notice via first-class mail to any new address thereby determined within 10 days of
12 receiving the notice that the Class Notice was undeliverable.

13 **c. Notification to Counsel:** No later than ten (10) days prior to the Final Fairness and
14 Approval Hearing, the Claims Administrator shall provide Defense Counsel and Class Counsel with
15 a declaration attesting to completion of the notice process, including any attempts to obtain valid
16 mailing addresses for and re-sending of any returned Class Notices, as well as the number of valid
17 opt-outs that the Claims Administrator received. Upon approval by the court, compliance with the
18 procedures described in this Section 5.03.b shall constitute due and sufficient notice to Class
19 Members of this proposed Settlement and the Final Fairness and Approval Hearing and shall satisfy
20 the requirement of due process. Nothing else shall be required of the Parties, Class Counsel, Defense
21 Counsel, or the Claims Administrator to satisfy the requirements of providing notice of the proposed
22 Settlement and the Final Fairness and Approval Hearing.

23 **Section 5.04: Responses to Notice**

24 **a. Requests for Exclusion from Class**

25 For any other Class Member to validly exclude himself or herself from the Class and this
26 Settlement (*i.e.*, to validly opt-out), a written request for exclusion must be signed by the Class
27 Member or his or her authorized representative, and must be sent to the Claims Administrator,
28 postmarked by no later than thirty (30) days after the date the Claims Administrator initially mails

1 the Class Notice to the Class Members. For Notices re-mailed by the Claims Administrator pursuant
2 to section 5.03.b, the written request for exclusion must be postmarked by no later than thirty (30)
3 days of the initial mailing of the Class Notice or twenty (20) days of the re-mailing, whichever is
4 later. The Class Notice shall contain individualized estimated payments, set forth instructions on
5 how to opt-out and include the language to be used in a request for exclusion. The date of the initial
6 mailing (or re-mailing for Class Notices re-mailed) of the Class Notice and the date the signed
7 request for exclusion was postmarked, shall be conclusively determined according to the records of
8 the Claims Administrator. Any Class Member who timely and validly requests exclusion from the
9 Class and this Settlement shall become a Non-Participating Class Member and shall not be entitled
10 to any Individual Settlement Payment, shall not be bound by the terms and conditions of this
11 Agreement, and shall not have any right to object, appeal, or comment thereon.

12 Final Settlement Class members may exclude themselves or “opt out” from a release of Class
13 Claims by not depositing or cashing their Individual Settlement Payment checks. The Class Notice
14 and Individual Settlement Payment check will conspicuously advise Final Settlement Class of such.

15 **b. Objections to Settlement**

16 For any Class Member to object to this Agreement, or any term of it, the person making the
17 objection must not submit a request for exclusion (*i.e.*, must not opt-out), and must, by no later than
18 thirty (30) days after the Class Notice was initially mailed to the Class Members, file with the Court
19 and serve on Class Counsel and Defense Counsel, a written statement of the grounds of objection,
20 signed by the objecting Class Member or his or her attorney, along with all supporting papers. For
21 Class Notices re-mailed by the Claims Administrator pursuant to section 5.03.b, written statements
22 of the grounds for objection must be filed and served no later than thirty (30) days after the initial
23 mailing of the Class Notice or twenty (20) days of the re-mailing, whichever is later. The date of
24 mailing or re-mailing of the Class Notice to the objecting Class Member shall be conclusively
25 determined according to the records of the Claims Administrator. The Court retains final authority
26 with respect to the consideration and admissibility of any Class Member objections.

27 Counsel for the Parties shall file any response to the objections submitted by objecting Class
28 Members at least ten (10) court days before the date of the Final Fairness and Approval Hearing or

ten (10) days after the receipt of the notice of objection, whichever is later.

c. Failure to Object

Any Class Member who fails to timely file and serve such a written statement of his or her intention to object shall be foreclosed from making any objection to this settlement, unless otherwise ordered by the Court.

d. Failure to Timely Opt Out

Any Class Member who fails to submit a timely request for exclusion from the Class automatically shall be deemed a member of the Final Settlement Class whose rights and claims with respect to the issues raised in the Action are determined by the Court's Final Order, and by the other rulings in the Action.

e. Right of Defendant to Void Agreement

If more than ten percent (10%) of Class Members make a valid request to be excluded from the Class as described in Section 5.04.a above and thus become Non-Participating Class Members, Defendant shall have the right, but not the obligation, to void the Agreement. If Defendant exercises that right to void the Agreement, then the Parties shall have no further obligations under the Agreement, including any obligation by Defendant to pay the Gross Fund Value Amount, or any amounts that otherwise would have been owed under this Agreement, except that Defendant shall pay the Claims Administrator's reasonable fees and expenses incurred as of the date that Defendant exercises their right to void the Agreement. Defendant shall notify Class Counsel and the Court whether they are exercising the right to void the Agreement no later than ten (10) calendar days after the Claims Administrator notifies the Parties of the final total number of valid requests to be excluded.

f. Right of Plaintiffs to Void Agreement

The Gross Fund Value Amount was calculated with, and is premised on, the understanding that there are approximately 181 Class Members and 25,504 workweeks during the time period of December 4, 2016, through July 28, 2022. To the extent that either of the forgoing estimates, as represented by Defendant, increases by more than 5%, Defendant will have the option to increase the Gross Fund Value Amount proportionately by the amount exceeding 5%. For example, if the number

1 of workweeks increases by 7% then Defendant shall increase the GSA by 2% if it exercises this
2 option. Likewise, if the number of class members increases by 7% then Defendant shall increase the
3 GSA by 2%. If Defendant declines to do so, Plaintiffs shall have the right, but not the obligation, to
4 terminate the settlement in its entirety and the Parties will be returned to their respective positions as
5 if no settlement had been contemplated.

6 **Section 5.05: Final Fairness and Approval Hearing**

7 **a. Final Approval Hearings**

8 On the date set forth in the Order of Preliminary Approval and Class Notice, which shall be
9 approximately one hundred and five (105) days after the initial mailing of the Notice of Proposed
10 Class Action Settlement, or on a reasonable date as set forth by the Court, a Final Fairness and
11 Approval Hearing shall be held before the Court in order (1) to review this Agreement and determine
12 whether the Court should give it final approval; and (2) to consider any timely objections made
13 pursuant to Section 5.04.b above and all responses by the Parties to such objections. At the Final
14 Fairness and Approval Hearing, the Parties shall ask the Court to give final approval to this
15 Agreement and shall submit to the Court a proposed Final Order approving the Settlement and which
16 shall be entered in the Action.

17 Representative Plaintiffs shall file a motion requesting final approval of the Settlement
18 approved by all Parties, the entry of which is a material condition of this Settlement. The Final
19 Approval Order shall adjudge that, among other things:

- 20 • The Settlement Administrator has fulfilled its initial notice and reporting
21 duties under the Settlement and that the Class Notice (i) constituted the best
22 practicable notice; (ii) constituted notice that was reasonably calculated, under
23 the circumstances, to apprise Class Members of the pendency of the Action,
24 and their right to exclude himself from or object to the proposed settlement
25 and to appear at the Final Approval Hearing; (iii) was reasonable and
26 constituted due, adequate, and sufficient notice to all persons entitled to
27 receive notice; and (iv) met all applicable requirements of due process, and
28 any other applicable rules or law.

- The Settlement is fair, reasonable, and adequate;
- Representative Plaintiffs and Class Counsel may adequately represent the Final Settlement Class for the purpose of entering into and implementing the Agreement;
- The Settlement Administrator is to execute the distribution of proceeds pursuant to the terms of this Agreement;
- The Final Approval Order and Judgment of dismissal shall be final and entered forthwith;
- Without affecting the finality of the Final Approval Order and Judgment, the Court retains continuing jurisdiction over Representative Plaintiffs, Defendant, the Final Settlement Class as to all matters concerning the administration, consummation, and enforcement of this Settlement Agreement;
- As of the Final Approval Date, the Representative Plaintiffs, the Final Settlement Class, and their Legally Authorized Representatives, heirs, estates, trustees, executors, administrators, principals, beneficiaries, representatives, agents, assigns, and successors, and/or anyone claiming through them or acting or purporting to act for them or on their behalf, regardless of whether they have received actual notice of the proposed Settlement, have conclusively compromised, settled, discharged, and provided: the Complete and General Release (in the case of Representative Plaintiffs) and the release of Released Class Claims (in the case of the Final Settlement Class Members), and are bound by the provisions of this Settlement Agreement;
- Notwithstanding the submission of a timely request for exclusion, Class Members are still bound by the settlement and release of the PAGA Claims or remedies under the Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), as requests for exclusion do not apply to the PAGA Claims, and further affirms that the State's claims for civil penalties pursuant to PAGA are

also extinguished;

- This Settlement Agreement and the Final Approval order and Judgment to be binding on, and have *res judicata* and preclusive effect in, all pending and future lawsuits or other proceedings that encompass the claims of Representative Plaintiffs and Final Settlement Class members and/or their heirs, estates, trustees, executors, administrators, principals, beneficiaries, representatives, agents, assigns, and successors, and/or anyone claiming through them or acting or purporting to act for them or on their behalf;
- Representative Plaintiffs and the Final Settlement Class members are permanently barred from filing, commencing, prosecuting, intervening in, or participating (as class members or otherwise) in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on the claims released herein; and
- The Settlement provided for herein, and any proceedings undertaken pursuant thereto, are not, and should not in any event be offered, received, or construed as evidence of, a presumption, concession, or an admission by any Party of liability or non-liability or of the certifiability or non-certifiability of a litigation class or collective, or that PAGA representative claims may validly be pursued; provided, however, that reference may be made to this Settlement in such proceedings as may be necessary to effectuate the provisions of this Settlement.

b. Vacatur, Reversal, or Material Modification of Final Order and Judgment on Appeal or Review

If, after a notice of appeal, petition for review, or any other motion, petition, or application, the reviewing court vacates, reverses, or modifies the Final Order and Judgment such that there is a material modification to the Settlement and that court's decision is not completely reversed, and the Final Order and Judgment is not fully affirmed on review by a higher court, then Representative Plaintiffs and Defendant shall each have the right, but not the obligation, to void the Settlement,

1 which the Party must do by giving written notice to the other Parties, the final reviewing court, and
2 the Court not later than ten (10) business days after the final reviewing court's decision vacating,
3 reversing, or materially modifying the Final Order becomes final and non-appealable. If either Party
4 exercises its right to void the Agreement under this section, then the Parties shall have no further
5 obligations under the Agreement, including any obligation by Defendant to pay the Gross Fund
6 Value Amount, or any amounts that otherwise would have been owed under this Agreement. The
7 Party exercising its right to void the Agreement shall pay the Claims Administrator's reasonable fees
8 and expenses incurred as of the date the Party exercises its right to void the Agreement. If the Parties
9 mutually agree to void the Agreement, then the Claims Administrator's reasonable fees and expenses
10 incurred as of the date the Parties exercise their right to void the Agreement shall be split equally. A
11 vacatur, reversal, or modification of the Court's award of the Service Award or Class Counsel's fees
12 or costs shall not constitute a vacatur, reversal, or material modification of the Final Order and
13 Judgment within the meaning of this paragraph.

14 **Section 5.06: Settlement Payment Procedures**

15 **a. Settlement Sum**

16 In exchange for the releases set forth in this Agreement, Defendant agrees to pay the Gross
17 Fund Value Amount of Seven Hundred Fifty Thousand Dollars and Zero Cents (\$750,000.00),
18 exclusive of employer-side payroll taxes. The Settlement Sum includes Class Counsel's attorney's
19 fees not to exceed Two Hundred Fifty Thousand Dollars and Zero Cents (\$250,000.00) and litigation
20 costs of not more than Twenty Thousand Dollars (\$20,000.00), a Service Award for Representative
21 Plaintiffs of not more than Ten Thousand Dollars (\$10,000.00) each, the PAGA penalty payment of
22 Twenty Five Thousand Dollars (\$25,000.00), which includes the payment of Eighteen Thousand
23 Seven Hundred Fifty Dollars (\$18,750.00) to the LWDA, and the Claims Administration Costs
24 anticipated to be not more than Ten Thousand Dollars (\$10,000.00).

25 **b. Allocation of Settlement Amount:** In full and complete settlement of the Action and
26 subject to this Settlement being approved by the Court, Defendant shall pay Seven Hundred Fifty
27 Thousand Dollars and Zero Cents (\$750,000.00), (the "Gross Fund Value Amount"). The Gross
28 Fund Value Amount shall be paid to the Claims Administrator no later than fifteen (15) calendar

1 days after the Final Effective Date. If the Court does not grant final approval upon the material terms
2 of the settlement (other than modification of the requested attorney's fees, costs or class
3 representative service award) or if more than 10% of the putative class members opt out as set forth
4 in Section 5.04(e) and the Defendant elects to void the settlement, Defendant shall have no further
5 obligation under this Agreement. If the Court grants final approval of the settlement, the settlement
6 funds shall be disbursed as follows:

7 **1. Reasonable attorney's fees and litigation expenses:** Class Counsel have
8 stated they shall request that the Court award them reasonable attorney's fees in an amount up to
9 one-third of the Gross Fund Value, or Two Hundred Fifty Thousand Dollars and Zero Cents
10 (\$250,000.00) and litigation costs in an amount up to Twenty Thousand Dollars (\$20,000.00).
11 Defendant has agreed neither to oppose nor adversely comment on the fees and litigation costs
12 request. The award of reasonable attorney's fees and litigation costs granted by the Court shall be
13 paid out of the Gross Fund Value Amount within twenty-five (25) calendar days of the Final
14 Effective Date in accordance with Section 5.06.d.2–3, below.

15 **2. Reasonable expenses of the Claims Administrator:**
16 The Claims Administrator shall be paid out of the Gross Fund Value Amount and such
17 payment shall not constitute payment to any Participating Class Member(s). The Claims
18 Administration Costs, expected not to exceed Ten Thousand Dollars (\$10,000.00), shall be paid out
19 of the Gross Fund Value Amount within twenty-five (25) calendar days after the Final Effective
20 Date in accordance with Section 5.06.d.1, below.

21 **3. Reasonable Service Award to the Representative Plaintiffs:**
22 Subject to Court approval, the Representative Plaintiffs shall make a separate application for
23 up to Ten Thousand Dollars (\$10,000.00) as a Service Award. The Service Award shall be paid by
24 check made payable to each Representative Plaintiff, which shall be delivered by the Claims
25 Administrator to Class Counsel within twenty-five (25) calendar days after the Final Effective Date.
26 The Service Award shall be paid out of the Gross Fund Value Amount and shall not constitute
27 payment(s) to any Participating Class Member(s).

28 It is the intent of the Parties that the Service Awards represent payment to Representative

1 Plaintiffs for the additional risks undertaken in prosecuting this action and their service to the Class
2 Members, and not wages, thus, the Claims Administrator shall not withhold any taxes from the
3 Service Award. The Service Award shall be reported on a Form 1099, which shall be provided by
4 the Claims Administrator to the Representative Plaintiffs and to the pertinent taxing authorities as
5 required by law. Although it is the contemplation of the Parties that the Service Award does not
6 represent wages, the Internal Revenue Service, the California Franchise Tax Board, or some other
7 taxing authority may take the position that some or all of the Service Award constitutes wages for
8 income tax and withholding purposes. The Representative Plaintiffs agree to assume the
9 responsibility of remitting to the Internal Revenue Service, the California Franchise Tax Board, and
10 any other relevant taxing authority the amounts required by law, if any, to be withheld by Defendant
11 from the Service Awards paid under this Agreement.

12 **4. PAGA Payment:** A payment of Twenty Five Thousand Dollars (\$25,000.00)
13 shall be allocated to PAGA penalties, Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750.00)
14 of which shall be payable to the California LWDA within twenty-five (25) calendar days of the Final
15 Effective Date. The PAGA penalties shall be paid out of the Gross Fund Value Amount. The
16 remaining portion of the PAGA payment shall be distributed pro-rata to the Final Settlement Class
17 as set forth below in Section 5.06.c.1.

18 **5. Allocation to Participating Class Members:** The amount remaining from
19 the Gross Fund Value Amount after deducting the court-awarded reasonable attorney's fees and
20 litigation costs, reasonable Claims Administration Costs, reasonable Service Award payments, and
21 PAGA penalties portion allocated to the LWDA (the "Net Fund Value Amount") shall be distributed
22 to members of the Class in accordance with the formula set forth below in Section 5.06.c. Final
23 Settlement Class members are not eligible to receive any compensation other than the Individual
24 Settlement Payments discussed below.

25 **c. Individual Settlement Payments:** The Individual Settlement Payments shall be
26 calculated as follows:

27 **1. Calculation:** Each Class Member of the Final Settlement Class who does not Opt-
28 Out shall be eligible to receive his/her Individual Settlement Payment, which shall be based on

information contained in Defendant's pertinent payroll records, and calculated as follows:

i) Each Class Member of the Final Settlement Class shall be allocated a payment that is equal to (i) the number of weeks he or she worked for Defendant in California, as a Class Member in an hourly or non-exempt position, based on the Class Data provided by Defendant, divided by (ii) the total number of weeks worked by all Participating Class Members based on the same Class Data, which is then multiplied by the Net Fund Value Amount. One day worked in a given week will be credited as a work week for purposes of this calculation. Therefore, the value of each Class Member's Individual Settlement Payment ties directly to the amount of weeks that he or she worked..

ii) The employee's share of the payroll taxes shall be deducted and paid from the Individual Settlement Payment. The Claims Administrator shall calculate the Individual Settlement Payments and the amount of the employee's share of payroll taxes to be deducted therefrom in order to determine the net Individual Settlement Payment.

2. Dispute Resolution: The Claims Administrator shall have the initial responsibility of resolving all disputes that arise during the claims administration process, including, without limitation, disputes, if any, regarding the calculation of the total number of gross wages earned by each Class Member in their respective positions as residential managers (or otherwise similar job duties and/or title) where the information submitted by Defendant based on their employment records differs from the information submitted by Class Members. In resolving such disputes, Defendant's employment records shall be presumed to be accurate and correct, and shall be final and binding, unless the information submitted by the Claimant (e.g., pay stubs, employment records, etc.) proves otherwise. In the event the Claims Administrator cannot resolve a dispute based on a review of the available information, the Claims Administrator shall request a conference call between the Claims Administrator, Class Counsel, and Defense Counsel to discuss and resolve the dispute. After such call, the Claims Administrator shall resolve the dispute, and such resolution shall be final and binding on the Class Member. In advance of the conference call, the Claims Administrator shall fax or email copies of all available information to all counsel.

3. Fair Formula: The Parties hereby agree that the formula for allocating payments to

1 Participating Class Members as provided herein is reasonable and designed to provide a fair
2 settlement to the Participating Class Members.

3 **4. Allocation of Net Fund Value Amount Payments and Taxes:** All Individual
4 Settlement Payments made to Participating Class Members under this Agreement shall be allocated
5 as one-third wages, one-third penalties, and one-third interest. The Claims Administrator shall
6 deduct from each Individual Settlement Payment all employee portions of payroll taxes from the
7 amount allocated to wages. Those Individual Settlement Payments shall be treated by the parties as
8 wages, subject to withholding and reporting on a Form W-2. Participating Class Members shall
9 report such Individual Settlement Payments as wages received, and Defendant shall report such
10 Individual Settlement Payments as wages paid, on their respective federal and state income tax
11 returns. No part of the Individual Settlement Payments shall be classified as a penalty or allocated to
12 a penalty for purposes of Section 62(f) of the Internal Revenue Code of 1986, but rather shall be
13 classified as wages. Defendant shall not make as part of this Agreement, nor be required to make,
14 any deductions, nor pay any monthly contributions for any insurance, retirement, bonuses, 403(b), or
15 profit-sharing plans related to monies paid as a result of this Agreement.

16 The Parties understand and agree that Defendant is not providing tax or legal advice, or
17 making representations regarding tax obligations or consequences, if any, related to this Agreement,
18 and that the members of the Final Settlement Class will assume any such tax obligations or
19 consequences that may arise from this Agreement, and that Final Settlement Class Members shall
20 not seek any indemnification from Defendant in this regard. The Parties agree that, in the event that
21 any taxing body determines that additional taxes are due from any Final Settlement Class Member,
22 such Class Member assumes all responsibility for the payment of any such taxes.

23 **d. Timing of Settlement Payments:** As set forth in Section 5.06.b. above, no later than
24 twenty (20) calendar days following the Final Effective Date, Defendant shall remit the full Gross
25 Fund Value Amount to the Claims Administrator via wire transfer (or other method reasonably
26 calculated to be received by the Claims Administrator within twenty (20) calendar days after the
27 Final Effective Date) for the purposes of making the payments described herein. Payments from the
28

Gross Settlement Fund shall fund the settlement and meet the obligations of Section 5.06.b and be paid by the Claims Administrator within the time frames set forth below in sections 5.06.d.1-5.

Payments of the following from the Gross Fund Value Amount shall be made in accordance with the following subparagraphs:

1. Claims Administrator: The Claims Administrator shall be paid the Claims Administration costs from the Gross Fund Value, expected to be not more than Ten Thousand Dollars (\$10,000.00), twenty-five (25) calendar days after the Final Effective Date.

2. Class Counsel's Fees: The amounts approved by the Court for Class Counsel's fees shall be paid by the Claims Administrator within twenty-five (25) calendar days after the Final Effective Date and the Claims Administrator shall pay the total attorney's fee award to Class Counsel.

3. Class Counsel's Costs: The amount approved by the Court for Class Counsel's costs shall be paid by the Claims Administrator within twenty-five (25) days after the Final Effective Date.

4. Class Representatives' Service Awards: The amount approved by the Court for the Class Representatives' Service Awards shall be paid by the Claims Administrator to Class Counsel within twenty-five (25) calendar days after the Final Effective Date.

5. Individual Settlement Payments: Within fifteen (15) days of the last date for Opt-Outs or Objections to be timely submitted in accordance with Section 5.04.a and 5.04.b, above, the Claims Administrator shall provide to the Parties a written statement of all Individual Settlement Payments to be paid to all Participating Class Members and all required payroll taxes. The Claims Administrator will distribute the Individual Settlement Payments to all Participating Class Members within twenty-five (25) calendar days of the Final Effective Date. Claims Administrator shall issue to each Participating Class Member a check in the amount of his or her Individual Settlement Payment, as described in Section 5.06.c.1 (less applicable taxes and withholdings) via first-class mail. Uncashed checks not negotiated within 180 days of their issuance are void. All Final Settlement Class Members shall be bound by this Agreement and the release herein even if the Class Member does not cash the settlement check issued to him or her comprising his or her Individual

1 Settlement Payment. If any Settlement Class Member has not cashed his or her Settlement Payment
2 check within ninety (90) days of issuance, the Settlement Administrator shall mail that Class
3 Member a postcard reminding him/her of the deadline to cash such check and providing information
4 as to how to obtain a reissued check in the event the check was lost, stolen or misplaced. Any checks
5 issued to Class Members shall remain valid and negotiable for one hundred eighty (180) days from
6 the date of issuance. After all settlement funds have been distributed and all checks issued to
7 Settlement Class Members have either been cashed or have remained uncashed and gone stale, the
8 Settlement Administrator shall deposit any residual funds from uncashed checks with the California
9 State Controller's Office – Unclaimed Property.

10 **e. Residuals**

11 If any amount of the Gross Fund Value Amount remains unallocated as a result of
12 modification to the requested attorney's fees, costs, Class Representative Service Award or Claims
13 Administration Costs, this amount shall become part of the Net Fund Value Amount and be
14 distributed pursuant to Section 5.06.c.

15 **f. Circular 230 Disclaimer**

16 Each party to this agreement (for purposes of this section, the "acknowledging party" and
17 each party to this agreement other than the acknowledging party, an "other party") acknowledges
18 and agrees that (1) no provision of this agreement, and no written communication or disclosure
19 between or among the parties or their attorneys and other advisers, is or was intended to be, nor shall
20 any such communication or disclosure constitute or be construed or be relied upon as, tax advice
21 within the meaning of united states treasury department circular 230 (31 CFR part 10, as amended);
22 (2) the acknowledging party (a) has relied exclusively upon his or its own, independent legal and tax
23 counsel for advice (including tax advice) in connection with this agreement, (b) has not entered into
24 this agreement based upon the recommendation of any other party or any attorney or advisor to any
25 other party, and (c) is not entitled to rely upon any communication or disclosure by any attorney or
26 adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging party;
27 and (3) no attorney or adviser to any other party has imposed any limitation that protects the
28 confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such

1 limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or tax
2 structure of any transaction, including any transaction contemplated by this agreement.

3 **ARTICLE VI**

4 **LIMITATIONS ON USE OF THIS SETTLEMENT**

5 **Section 4.01: No Admission**

6 Defendant denies that Defendant has engaged in any unlawful activity, that Defendant failed
7 to comply with the law in any respect, that Defendant has any liability to anyone based upon the
8 claims asserted in the Action, and Defendant asserts that but for this Settlement a class should not be
9 certified in this Action. This Agreement is entered into solely for the purpose of compromising
10 highly disputed claims. Nothing in this Agreement is intended or shall be construed as an admission
11 of liability or wrongdoing by Defendant.

12 Defendant has concluded that any further defense of this litigation would be protracted and
13 expensive for all Parties. Substantial amounts of time, energy, and resources of Defendant have been
14 spent and, unless this Settlement is agreed to, will continue to be devoted to the defense of the
15 Claims asserted by the Class. Defendant has also taken into account the risks of further litigation in
16 reaching this decision. Defendant has, therefore, agreed to settle in the manner and upon the terms
17 set forth in this Agreement to put to rest the Claims as set forth in the Action.

18 As to the claims and allegations in this Action, including but not limited to wage claims,
19 meal and rest period claims, overtime pay claims, minimum wage claims, claims for uncompensated
20 work time, wage statement claims, claims for waiting time penalties, unfair business practices
21 claims, claims for reimbursement of business expenses, and claims for PAGA penalties, Defendant
22 denies and continues to deny each of those claims and contentions alleged by Representative
23 Plaintiffs and the Class in the Action. Defendant has repeatedly asserted and continues to assert
24 defenses thereto, and has expressly denied and continues to deny any wrongdoing or legal liability
25 arising out of any of the facts or conduct alleged in the Action.

26 **Section 4.02: Non-Evidentiary Use**

27 Whether or not the settlement becomes final, neither this Agreement nor any of its terms nor
28 the Settlement itself shall be: (a) construed as, offered, or admitted in evidence as, received as, or

1 deemed to be evidence for any purpose adverse to Defendant or any other of the Released Parties,
2 including but not limited to, evidence of a presumption, concession, indication, or admission by any
3 of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b)
4 disclosed, referred to, or offered in evidence against any of the Released Parties in any further
5 proceeding in the Action, or any other civil, criminal, or administrative action or proceeding except
6 for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendant to
7 establish that a Class Member has resolved any of his/her claims released through this Agreement.

8 **Section 4.03: Nullification**

9 The Parties have agreed to the certification of the Class for the sole purpose of effectuating
10 this Agreement. If (a) the Court should for any reason fail to certify a class for settlement, or (b) the
11 Court should for any reason fail to approve this Settlement in the form agreed to by the Parties
12 (except for the amount of attorney's fees, costs and Service Awards awarded), or (c) the Court
13 should for any reason fail to enter the Final Order, or (d) the Final Order is reversed, modified, or
14 declared or rendered void, then (i) this Agreement shall be considered null and void; (ii) neither this
15 Agreement nor any of the related negotiations or proceedings shall be of any force or effect; (iii) all
16 Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had
17 been neither entered into nor filed with the Court; and (iv) the fact that the Parties were willing to
18 stipulate to class certification as part of the Settlement shall have no bearing on, and shall not be
19 admissible in connection with, the issue of whether a class should be certified in a non-settlement
20 context in this Action or any other action, and in any of those events, Defendant expressly reserves
21 the right to oppose any motion for class certification.

22 Invalidation of any material portion of this Agreement, except for the amount of attorney's
23 fees, costs and Service Award, shall invalidate this Agreement in its entirety unless the Parties shall
24 subsequently agree in writing that the remaining provisions shall remain in full force and effect.

25 **ARTICLE VII**

26 **RELEASES**

27 **Section 7.01: Releases by Class Members**

28 On the Final Effective Date, the Final Settlement Class shall be bound by this Agreement.

1 **Section 7.02: Release of All Claims Relating To The Action**

2 Upon the court's final approval of the class settlement and entry of Final Order and
3 Judgment, each member of the Final Settlement Class shall be deemed to have released and
4 discharged each Defendant and all of its former and present parents, and affiliates, and their officers,
5 directors, employees, partners, shareholders, attorneys, and agents, and any other successors, assigns
6 or legal representatives from any and all claims that were asserted and that could have been asserted
7 based on the facts contained in the Complaint filed in this Action and which were included leading
8 up to and during mediation, including without limitation to, any and all alleged claims for unpaid
9 wages, unpaid minimum wages, unpaid overtime, regular rate compensation, unpaid meal or rest
10 break premiums, itemized wage statement penalties, unreimbursed business expenses, failure to
11 provide requisite writings, waiting time penalties under the California Labor Code and Business &
12 Professions Code (including Section 17200 et seq.); claims for penalties brought under the Labor
13 Code Private Attorneys General Act of 2004 (Labor Code Section 2698 *et seq.*); claims for
14 restitution and other equitable relief, liquidated damages, or penalties in their positions as Settlement
15 Class Members during the Class Period.

16 Final Settlement Class Members who cash or deposit their Individual Settlement Payment
17 checks will also release their Class Claims.

18 **Section 7.03: 1542 Release by Representative Plaintiffs**

19 In addition to the Settlement Class Members' Released Class Claims described above, in
20 exchange for the consideration recited in this Agreement, including but not limited to the court-
21 approved Class Representative Service Awards, Representative Plaintiffs hereby enter into a
22 Complete and General Release which releases, acquits, and discharges any covenants not to sue any
23 of the Releasees for any claim, whether known or unknown, which Representative Plaintiffs have
24 ever had, or hereafter may claim to have, arising on or before the date that they sign this Agreement,
25 including without limitation, any claims relating to or arising out of any aspect of their employment,
26 or the termination of their employment, with Defendant, any claims for unpaid compensation,
27 wages, reimbursement for business expenses, penalties, or waiting time penalties under the
28 California Labor Code, the California Business and Professions Code, the federal Fair Labor

Standards Act, 29 U.S.C. section 201, *et seq.*, or any federal, state, county or city law or ordinance regarding wages or compensation; any claims for employee benefits, including without limitation, any claims under the Employee Retirement Income Security Act of 1974; any claims of employment discrimination on any basis, including without limitation, any claims under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866, 42 U.S.C. section 1981, the Civil Rights Act of 1991, the Americans with Disabilities Act of 1991, the Family and Medical Leave Act of 1993, the California Government Code, or any other federal, state, county or city law or ordinance regarding employment discrimination. Representative Plaintiffs acknowledge and agree that the foregoing general release is given in exchange for the consideration provided to them under this Agreement by Defendant. However, this release shall not apply to claims for workers' compensation benefits, unemployment insurance benefits, pension or retirement benefits, or any other claim or right that as a matter of law cannot be waived or released.

Representative Plaintiffs expressly waive any rights or benefits available to them under the provisions of Section 1542 of the California Civil Code, which provides as follows:

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

Representative Plaintiffs understand fully the statutory language of Civil Code section 1542 and, with this understanding, nevertheless elect to, and hereby do, assume all risks for claims that have arisen, whether known or unknown, which they ever had, or hereafter may claim to have, arising on or before the date of their signatures to this Agreement, and specifically waive all rights they may have under California Civil Code section 1542.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

Section 8.01: Amendments or Modification

The terms and provisions of this Agreement may be amended or modified only by an express

1 written agreement that is signed by all the Parties (or their successors-in-interest) and their counsel.

2 **Section 8.02: Representations and Warranties of Defendant's Records**

3 Defendant represents and warrants that the documents provided to Class Counsel during and
4 after mediation that constituted a material condition to this Settlement are substantially accurate to
5 the best of their knowledge.

6 **Section 8.03: Assignment**

7 None of the rights, commitments, or obligations recognized under this Agreement may be
8 assigned by any Party, Class Member, Class Counsel, or Defense Counsel without the express
9 written consent of each other Party and their respective counsel. The representations, warranties,
10 covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under
11 this Agreement and shall not be construed to confer any right or to avail any remedy to any other
12 person.

13 **Section 8.04: Governing Law**

14 This Agreement shall be governed, construed, and interpreted, and the rights of the Parties
15 shall be determined, in accordance with the laws of the State of California, irrespective of the State
16 of California's choice of law principles.

17 **Section 8.05: Entire Agreement**

18 This Agreement, including the Exhibit referred to herein, which forms an integral part hereof,
19 contains the entire understanding of the Parties hereto with respect of the subject matter contained
20 herein. In case of any conflict between text contained in Articles I through VI of this Agreement and
21 text contained in the Exhibit to this Agreement, the former (*i.e.*, Articles I through VI) shall be
22 controlling. There are no restrictions, promises, representations, warranties, covenants, or
23 undertakings governing the subject matter of this Agreement other than those expressly set forth or
24 referred to herein. This Agreement supersedes all prior agreements and understandings among the
25 Parties hereto with respect to the settlement of the Action including correspondence between Class
26 Counsel and Defense Counsel. No rights hereunder may be waived except in writing.

27 **Section 8.06: Counterparts and Fax Signatures**

28 This Agreement, and any amendments hereto, may be executed in any number of

1 counterparts and any Party and/or their respective counsel hereto may execute any such counterpart,
2 each of which when executed and delivered shall be deemed to be an original and all of which
3 counterparts taken together shall constitute one instrument. It shall not be necessary in making proof
4 of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.
5 A fax or electronic signature on this Agreement shall be as valid as an original signature.

6 **Section 8.07: Meet and Confer Regarding Disputes**

7 Should any dispute arise among the Parties or their respective counsel regarding the
8 implementation or interpretation of this Agreement, a representative of Class Counsel and a
9 representative of Defense Counsel shall meet and confer in good faith in an attempt to resolve such
10 disputes prior to submitting such disputes to the Court.

11 **Section 8.08: Agreement Binding on Successors**

12 This Agreement shall be binding upon, and inure to the benefit of, the successors in interest
13 of each of the Parties.

14 **Section 8.09: Cooperation in Drafting**

15 The Parties have cooperated in the negotiation and preparation of this Agreement. This
16 Agreement shall not be construed against any Party on the basis that the Party, or the Party's
17 counsel, was the drafter or participated in the drafting of this Agreement.

18 **Section 8.10: Fair Settlement**

19 Representative Plaintiffs, Defendant, Class Counsel, and Defense Counsel have arrived at
20 this Agreement through arm's-length negotiation and believe that this Agreement reflects a fair,
21 reasonable, and adequate settlement of the Action considering all relevant factors, current and
22 potential, and believe the Agreement is consistent with public policy and fully complies with
23 applicable provisions of law.

24 **Section 8.11: Headings**

25 The descriptive heading of any section or paragraph of this Agreement is inserted for
26 convenience of reference only and does not constitute a part of this Agreement and shall not be
27 considered in interpreting this Agreement.

1 **Section 8.12: Notice**

2 All notices, demands, or other communications given under this Agreement shall be in
3 writing and deemed to have been duly given as of the third business day after mailing by first-class
4 United States mail, addressed as follows:

5 *To Representative Plaintiffs and the Class:*

6 Arthur R. Botham, Jr.
7 Law Offices of Arthur R. Botham, Jr., A Law Corporation
8 2169 First Avenue
9 San Diego, California 92101
10 Phone: (619) 358-9738
11 Fax: (619) 393-0103

12 Zachary T. Tyson
13 Law Office of Zachary T. Tyson ALC
14 2169 First Avenue
15 San Diego, California 92101
16 Phone: (619) 237-9292

17 David Mara
18 Matthew Crawford
19 Mara Law Firm, PC
20 2650 Camino Del Rio North, Suite 205
21 San Diego, CA 92108
22 Phone: (619) 234-2833
23 Fax: (619) 234-4048

24 *To Defendant:*

25 Lindsay E. Hutner
26 Lindsay.Hutner@gtlaw.com
27 Sam Hyde
28 hydes@gtlaw.com
29 Greenberg Traurig, LLP
30 101 Second Street, Suite 2200
31 San Francisco, CA 94105
32 Telephone: (415) 655-1300
33 Facsimile: (415) 707-2010

34 **Section 8.13: Enforcement and Continuing Jurisdiction of the Court**

35 To the extent consistent with class action procedure, this Agreement shall be enforceable by
36 the Court pursuant to California Code of Civil Procedure section 664.6. The Court shall retain
37 continuing jurisdiction over this Action and over all Parties and Class Members to the fullest extent
38

1 to enforce and effectuate the terms and intent of this Agreement.

2 **Section 8.14: Mutual Full Cooperation**

3 The Parties agree to fully cooperate with each other to accomplish the terms of this
4 Agreement, including but not limited to execution of such documents, and to take such other action
5 as may reasonably be necessary to implement the terms of this Agreement. The Parties to this
6 Agreement shall use their best efforts, including all efforts contemplated by this Agreement, to
7 effectuate this Agreement and the terms set forth herein. In the event the Parties are unable to reach
8 agreement on the form or content of any document needed to implement the Settlement, or on any
9 supplemental provisions that may become necessary to effectuate the terms of the Settlement, the
10 Parties agree to seek the assistance of the Court.

11 **Section 8.15: Authorization to Act**

12 Class Counsel warrant and represent that they are authorized by the Representative Plaintiffs,
13 and Defense Counsel warrant that they are authorized by Defendant, to take all appropriate action
14 required to effectuate the terms of this Agreement, except for signing the documents, including but
15 not limited to this Agreement, that are required to be signed by the Parties.

16 **Section 8.16: No Reliance on Representations**

17 The Parties have made such investigation of the facts and the law pertaining to the matters
18 described herein and to this Agreement as they deem necessary, and have not relied, and do not rely,
19 on any statement, promise, or representation of fact or law, made by any of the other Parties, or any
20 of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted
21 rights, or with regard to the advisability of making and executing this Agreement, or with respect to
22 any such matters. No representations, warranties, or inducements have been made to any Party
23 concerning this Agreement other than those expressly set forth or referred to herein.

24 **Section 8.17: No Collateral Attack**

25 This Agreement shall not be subject to collateral attack by any Class Member or any
26 recipient of the Class Notice after the Final Effective Date. Such prohibited collateral attacks shall
27 include but not be limited to claims that the Class Member failed for any reason to receive timely
28 notice of the procedure for disputing the calculation of his or her Individual Settlement Payment.

1 **Section 8.18: No Public Comment/Non-Disparagement Clause**

2 Representative Plaintiffs and Class Counsel will not make any public disclosure of the
3 settlement terms until after the settlement is preliminarily approved by the Court. Class Counsel will
4 take all steps necessary to ensure Representative Plaintiffs is aware of, and will encourage her to
5 adhere to, the restriction against any public disclosure of the settlement terms until after the
6 settlement is preliminarily approved by the Court. None of these prohibitions on public comment
7 shall prohibit Class Counsel's communications with the Court as necessary to finalize the settlement.

8 Representative Plaintiffs and Defendant represent and agree that they have not and will not
9 directly or indirectly disparage, encourage, assist, or induce others to disparage the other Party. For
10 the purposes of this Agreement, "disparage" shall include making or publishing any statement or
11 other content, whether in written, oral, electronic, digital or other form, truthful or otherwise, which
12 may reasonably be expected to adversely affect the business, public image, reputation or goodwill of
13 the other Party, including, without limitation, their operations, employees, directors or related
14 persons, and their past, present or future products or services and the facts relating to Representative
15 Plaintiffs' past employment.

16 **Section 8.19: Interim Stay of Proceedings**

17 The Parties agree to the Court staying and holding all proceedings in the Action, except such
18 proceedings necessary to implement and complete the Settlement, in abeyance pending the
19 Settlement Hearing to be conducted by the Court.

20 [signatures on the following page]
21
22
23
24
25
26
27
28

EXECUTION BY PARTIES AND COUNSEL

Dated: 9/21/2022

DocuSigned by:
Chris Carver CMC
64896488E99245B...
Christopher Carver, Representative Plaintiff

Dated:

Abel Escobedo, Representative Plaintiff

Dated: 9/9/2022

DocuSigned by:
Stephen Stroud
D74B8134F8444F6...
By: Stephen Stroud
For Defendant Matheson Tri-Gas, Inc.

APPROVED AS TO FORM AND CONTENT:

Dated: 9/21/2022

DocuSigned by:
David Mara
C2B24CA3897E405...
David Mara
Matthew Crawford
Mara Law Firm, PC
Attorneys for Representative Plaintiff Christopher Carver

Dated:

Arthur R. Botham, Jr.
Law Offices of Arthur R. Botham, Jr., A Law Corporation
Attorney for Representative Plaintiff Abel Escobedo

Dated:

Zachary T. Tyson
Law Office of Zachary T. Tyson ALC
Attorneys for Representative Plaintiff Abel Escobedo

Dated: 9/8/2022

DocuSigned by:
Lindsay Hutner
411FEB97F9BF45B...
Lindsay E. Hutner
Sam Hyde
Greenberg Traurig, LLP
Attorneys for Defendant Matheson Tri-Gas, Inc.

1 EXECUTION BY PARTIES AND COUNSEL

2
3 Dated:

4 Christopher Carver, Representative Plaintiff

5
6 Dated:

7 Abel Escobedo, Representative Plaintiff

8 Dated: 9/9/2022

9 DocuSigned by:
Stephen Stroud
By: Stephen Stroud
For Defendant Matheson Tri-Gas, Inc.

10 APPROVED AS TO FORM AND CONTENT:

11
12 Dated:

13 David Mara
14 Matthew Crawford
15 Mara Law Firm, PC
Attorneys for Representative Plaintiff Christopher Carver

16
17 Dated: 9/21/22

18 Arthur R. Botham, Jr.
19 Law Offices of Arthur R. Botham, Jr., A Law Corporation
Attorney for Representative Plaintiff Abel Escobedo

20
21 Dated: 9/21/2022

22 Zachary T. Tyson
23 Law Office of Zachary T. Tyson ALC
Attorneys for Representative Plaintiff Abel Escobedo

24
25 Dated: 9/8/2022

26 DocuSigned by:
Lindsay Hutner
Lindsay E. Hutner
27 Sam Hyde
Greenberg Traurig, LLP
28 Attorneys for Defendant Matheson Tri-Gas, Inc.

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TABLE OF EXHIBITS

Exhibit A: Notice of Proposed Class Action Settlement

Exhibit A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

ABEL ESCOBEDO and CHRISTOPHER
CARVER, on behalf of themselves, all
others similarly situated, and on behalf of the
general public,

Plaintiffs,

v.

MATHESON TRI-GAS, INC., an unknown
business entity; and DOES 1 through 25,
inclusive,

Defendants.

CASE NO.: 37-2020-00044507-CU-OE-CTL

NOTICE OF PENDENCY OF PUTATIVE
CLASS ACTION, PROPOSED
SETTLEMENT AND HEARING DATE
FOR COURT APPROVAL

Judge: Hon. Ronald F. Frazier
Dept.: C-65
Action Filed: December 4, 2020
Trial Date: Not set

TO: All non-exempt drivers, truck drivers, truck workers, or similar job designations and titles, and all other similarly situated non-exempt employees of Defendant Matheson Tri-Gas, Inc. employed in the State of California from December 4, 2016 through July 28, 2022.

If You Qualify For Inclusion in The Settlement Class And You Wish To Participate In The Settlement And Receive A Settlement Payment, You Are Not Required To Take Any Action.

Please read this notice carefully. If you choose not to participate and would like to be excluded from the settlement or if you choose to object to the terms of the settlement, this notice requires you to file a request for exclusion or notice of objection on or before **<<30 days after notice mailed>>**. YOU ARE NOT BEING SUED. If you choose to be excluded from the settlement, you will not receive any settlement funds.

Pursuant to the order of the San Diego County Superior Court, entered on **<<preliminary approval>>**, YOU ARE HEREBY NOTIFIED AS FOLLOWS: A proposed settlement has been reached between the Parties in the lawsuit identified in the caption above, pending in the San Diego County Superior Court, on behalf of the Settlement Class described above, which has been provisionally certified for purposes of this settlement. Your estimated individual settlement amount is **<< >>**. This is only an estimate. The final amount may change and is subject to final approval by the Court.

You have received this notice because records indicate you qualify as a member of the Settlement Class. This notice is designed to advise you of how you can participate in the settlement, how you can object to the settlement, and how you can exclude yourself from the settlement.

I. BACKGROUND OF THE CASE

On December 4, 2020, Abel Escobedo (“Escobedo”) filed a class action complaint in the San Diego County Superior Court entitled *Abel Escobedo v. Matheson Tri-Gas, Inc.*, Case No. 37-2020-00044507-CU-OE-CTL, on behalf of himself and a proposed class consisting of allegedly similarly situated individuals currently or formerly employed by *Matheson Tri-Gas, Inc.* (“Matheson” or “Defendant”), in which he asserted claims for: (1) Failure to Pay Minimum Wage; (2) Failure to Pay

Overtime Wages; (3) Failure to Provide Accurate, Itemized Wage Statements; (4) Failure to Permit Meal Periods; (5) Failure to Permit Rest Periods; (6) Waiting time penalties; (7) Civil Penalties Under the Private Attorney General Act of 2004; and (8) Unlawful Business Practices. On May 10, 2021, Christopher Carver (“Carver,” and together with Escobedo, “Plaintiffs”) filed a complaint in the matter of *Christopher Carver v. Matheson Tri-Gas, Inc.*, Case No. 37-2021-00020711-CU-OE-CTL in the Superior Court of California, County of San Diego, alleging the following claims: (1) Failure to Pay All Straight Time Wages; (2) Failure to Pay All Overtime Wages; (3) Failure to Provide Meal Periods; (4) Failure to Authorize and Permit Rest Periods; (5) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; (6) Failure to Pay All Wages Due at the Time of Termination of Employment; (7) Irregular Pay Periods; (8) Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy; and (9) Violation of Unfair Competition Law. That same day, Carver filed a complaint in the matter of *Christopher Carver v. Matheson Tri-Gas, Inc.*, Case No. 37-2021-00020726-CU-OE-CTL in the Superior Court of California, County of San Diego, alleging identical violations of the California Labor Code and seeking civil penalties under the PAGA. These complaints have now been consolidated into a single action. Collectively, the complaints and associated letters to the LWDA constitute the “Litigation.”

Matheson contends the claims in this Litigation are without merit, and disputes all claims for damages, penalties, and other relief. No court has ruled on the merits of the Litigation.

Plaintiffs have vigorously prosecuted this case, and Matheson has vigorously defended it. The Parties have investigated the facts to assess the relative merits of Plaintiffs’ class action and representative claims and Matheson’s defenses to those claims. Plaintiffs’ attorneys (“Class Counsel”) reviewed extensive documents and information produced by Matheson and conducted extensive analysis of the potential damages and claims.

The Parties believe that further proceedings in this case, including a trial and probable appeals, would be very expensive and protracted. No one can confidently predict how the various legal questions at issue, including liability, and the amount of damages or penalties, if any, would ultimately be resolved. Therefore, upon careful consideration of all of the facts and circumstances of this case, the Parties believe that the proposed settlement is fair, reasonable and adequate.

The Parties have entered into a Class Action Settlement Agreement which has been granted preliminary approval by the Court. The Agreement provisionally certifies the Settlement Class for purposes of this settlement.

II. SUMMARY OF THE PROPOSED SETTLEMENT

Plaintiffs and Class Counsel support this settlement. Among the reasons given for support include the risk that class certification could be denied, the inherent risk of trial on the merits, and the delays associated with litigation, including appeals.

The settlement provides for the following:

A. Gross Fund Value Amount: Defendant will pay \$750,000.00 to settle the Litigation. The \$750,000.00 Gross Fund Value Amount shall consist of the following elements: (a) Class Counsel’s Attorney’s Fees; (b) Litigation Expenses; (c) Class Representative Service Award; (d) Settlement Administration Expenses; (e) PAGA Payment to the California Labor and Workforce Development Agency; and (f) Net Fund Value Amount. Each of these components is described below.

B. Class Counsel’s Attorney’s Fees: Class Counsel anticipates requesting an attorney fee award of not more than one-third of the Gross Fund Value Amount, subject to court approval, which shall be paid from the Gross Fund Value Amount.

C. Litigation Costs: Class Counsel anticipates requesting an award of no more than \$20,000.00 subject to court approval, as reimbursement for litigation costs, which shall be paid from the Gross Fund Value Amount.

D. Class Representative Service Award: Plaintiffs anticipate requesting a service award of no more than \$10,000.00 each, subject to court approval, for their role serving as Class Representative, which shall be paid from the Gross Fund Value Amount.

E. Private Attorneys General Act (PAGA) Allocation: The Parties have designated \$25,000.00 of the Gross Fund Value Amount as representing the recovery of civil penalties pursuant to the Labor Code Private Attorneys General Act of 2004. Of this amount, 75% (\$18,750.00) will be paid to the California Labor and Workforce Development Agency (LWDA), and the remaining 25% (\$6,250.00) shall become part of the Net Fund Value Amount available for distribution to members of the Class.

F. Settlement Administration Expenses: The Parties have selected, and the court has approved Phoenix Class Action Settlement Administration Solutions (“Phoenix”) to administer the settlement. Upon final approval, Class Counsel will request that the court approve a payment to Phoenix to cover its fees and costs associated with giving notice to the Class, administering and disbursing the Net Settlement Fund, and other activities required to administer the settlement. The Parties estimate that the payment to Phoenix will be approximately \$10,000, which shall be paid from the Gross Fund Value Amount.

G. Net Fund Value Amount: The Net Fund Value Amount consists of all funds remaining from the Gross Fund Value Amount after subtraction of court-approved Class Counsel’s Attorney’s Fees, Litigation Costs, Class Representative Service Award, PAGA Payment to the LWDA, and Settlement Administration Expenses. The Net Fund Value Amount will be distributed to the Settlement Class as described below.

H. Class Defined: “Class” means “All non-exempt drivers, truck drivers, truck workers, or similar job designations and titles, and all other similarly situated non-exempt employees of Defendant Matheson Tri-Gas, Inc. employed in the State of California from December 4, 2016 through July 28, 2022.”

I. Settlement Class Defined: “Settlement Class” – means all those persons who are members of the Class and who have not properly and timely excluded themselves (“opted out”) from the Litigation.

J. Settlement Period Defined: “Settlement Period” – means December 4, 2016 through July 28, 2022.

K. Allocation of Net Fund Value Amount Among Settlement Class Members: Each Settlement Class Member shall be entitled to a portion of the Net Settlement Fund which will be allocated proportionally based on the amount of weeks worked by each Settlement Class Member during the Settlement Period in proportion to the total number of weeks worked by all Participating Class Members during the Settlement Period.

L. Tax Treatment of Payments to Settlement Class Members: All Individual Settlement Payments made to Participating Class Members under this Agreement shall be allocated one-third wages, one-third penalties, and one-third interest. The Claims Administrator shall deduct from each Individual Settlement Payment all employee portions of payroll taxes from the amount allocated to wages. Those Individual Settlement Payments shall be treated by the parties as wages, subject to withholding and reporting on a Form W-2. Participating Class Members shall report such Individual Settlement Payments as wages received. No part of the Individual Settlement Payments shall be classified as a penalty or allocated to a penalty for purposes of Section 62(f) of the Internal Revenue Code of 1986, but rather shall be classified as wages. Each Settlement Class Member shall be responsible for remitting to state and/or federal taxing authorities any applicable taxes which may be owed on the portion of his or her Settlement Payment or Class Representative Service Award. The

Settlement Administrator shall report all required information to the appropriate taxing authorities regarding all payments made pursuant to this Agreement.

III. WHAT ARE YOUR RIGHTS AS A CLASS MEMBER?

Your interests as a Settlement Class Member are represented by Plaintiffs and Class Counsel. Unless you opt out of the Settlement Class, you are a part of the Settlement Class, you will receive your settlement share, be bound by the terms of the settlement agreement and any final judgment that may be entered by the court, and you will be deemed to have released certain claims against Matheson as described below. Class Counsel will be seeking court approval for payment for its fees and litigation costs from the Gross Fund Value Amount. Accordingly, as a member of the Settlement Class you will not be individually responsible for the payment of attorney's fees or reimbursement of litigation expenses unless you retain your own counsel, in which event you will be responsible for your own attorney's fees and costs.

A. Participating in the Settlement

If You Qualify For Inclusion In The Settlement Class And You Wish To Participate In The Settlement, You Are Not Required To Take Any Action. If the court grants final approval to the settlement and you qualify as a Settlement Class Member, you will receive a Settlement Payment based on the calculations described above. Your estimated individual settlement amount is << >>, which is based on Defendant's records showing you worked workweeks during the Settlement Period. This is only an estimate. The final amount may change and is subject to final approval by the Court. You will also be bound by the terms of the settlement and will release Defendant and all related or affiliated entities from any and all claims that you may have based on the allegations in the lawsuit.

B. Objecting to the Settlement

If you would like to challenge any of the settlement terms you can object to the settlement before final approval. However, if the Court rejects your objection you will still be bound by the terms of the settlement unless you seek exclusion, as described below. To object, you must mail a written objection entitled "Class Member Objection" and a notice of intention to appear to the San Diego County Superior Court, Department C-65, 330 West Broadway, San Diego, CA 92101, by <<30 days after notice mailing>>, and send copies to the following:

CLASS COUNSEL:

Arthur R. Botham, Jr.
Law Offices of Arthur R. Botham, Jr., A Law Corporation
2169 First Avenue
San Diego, California 92101
Phone: (619) 358-9738
Fax: (619) 393-0103

Zachary T. Tyson
Law Office of Zachary T. Tyson ALC
2169 First Avenue
San Diego, California 92101
Phone: (619) 237-9292

David Mara
Matthew Crawford
Mara Law Firm, PC
2650 Camino Del Rio North, Suite 205
San Diego, CA 92108
Phone: (619) 234-2833
Fax: (619) 234-4048

COUNSEL FOR DEFENDANT:

Lindsay E. Hutner
Sam Hyde
Greenberg Traurig, LLP
101 Second Street, Suite 2200
San Francisco, CA 94105
Tel: (415) 655-1300/Fax: (415) 707-2010

Any Class Member Objection shall state each specific reason in support of your objection and any legal support for each objection. Your objection must also state your full name, address, telephone number, and the dates of your employment as a qualified member of the Settlement Class defined above. To be valid and effective, any Class Member Objection to approval of the settlement must be mailed to San Diego County Superior Court and served upon and received by each of the above-listed attorneys no later than << 30 days after notice mailed>>. **DO NOT TELEPHONE THE COURT.**

If you choose to file Class Member Objection to the terms of this settlement, you may enter an appearance *in propria persona* (meaning you choose to represent yourself) or through your own attorney. To do so, you must file an entry of appearance with the Clerk of the San Diego County Superior Court and deliver copies to each of the attorneys listed above. Such entry of appearance must be filed with the court and delivered to the above attorneys no later than <<30 days after notice mailed>>. You will then continue as a settlement class member either *in propria persona* or with representation by your own attorney and will be solely responsible for the fees and costs of your attorney. The final fairness hearing at which the court will adjudicate any objections and be asked to approve the settlement will be on _____, 2023 at _____ a.m. in Department C-65 of the San Diego County Superior Court, or such other, later date as the court may authorize.

C. Excluding Yourself from the Settlement

If you qualify for inclusion in the Class but you do not wish to participate in the settlement, you may exclude yourself (i.e., “opt-out”) by submitting a letter requesting exclusion. Your letter must be signed by you personally and must clearly state: (1) your name, address, telephone number, the last four digits of your social security number, and the dates of your employment; and (2) your wish to be excluded from the Settlement Class. **Your letter requesting exclusion must be hand-delivered or postmarked on or before<<30 days after notice mailed>>, 2023, and mailed to:**

<<Name, Address and Telephone Number of Settlement Administrator>>

Any person who timely submits a letter following the procedures above to request exclusion from the Class shall, upon receipt, no longer be a member of the Settlement Class, shall be barred from participating in any portion of the settlement, may not object to the settlement, and shall receive no payment or benefits from the settlement. Any such person will not have been deemed to have released any claims he or she may have against Defendant by and through this litigation.

IV. EFFECT OF THE SETTLEMENT

A. Released Rights and Claims

Upon the Court’s final approval of the class settlement and entry of final judgment, each Class Member shall be deemed have released and discharged each Defendant and all of its former and present parents, and affiliates, and their officers, directors, employees, partners, shareholders, attorneys, and agents, and any other successors, assigns or legal representatives from any and all claims that were asserted and that could have been asserted based on the facts contained in the Complaint filed in this Action and which were included leading up to and during mediation, including without limitation to, any and all alleged claims for unpaid wages, unpaid minimum wages, unpaid overtime, regular rate compensation, unpaid meal or rest break premiums, itemized wage statement penalties, unreimbursed business expenses, failure to provide requisite writings, waiting time penalties under the California Labor Code and Business & Professions Code (including Section 17200 et seq.); claims for penalties brought under the Labor Code Private Attorneys General Act of 2004 (Labor Code Section 2698 et seq.); claims for restitution and other equitable relief, liquidated damages, or penalties in their positions as Settlement Class Members during the Settlement Period.

V. FINAL SETTLEMENT APPROVAL HEARING

The court will hold a hearing in Department C-65 of the San Diego County Superior Court, 330 West Broadway, San Diego, CA 92101, on << _____ >>, 2023, at _____ a.m., to determine whether the

settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for Attorney's Fees and Litigation Costs, and the Class Representative Service Awards to be paid to the Class Representatives. Class Counsel's application for attorney's fees and reimbursement of expenses will be on file with the Court no later than 16 court days before this hearing and will be available for review after that date.

The hearing may be continued without further notice to the settlement class. It is not necessary for you to appear at this hearing unless you have timely filed an objection.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you are referred to the detailed Stipulated Settlement Agreement and Release of Claims, which is on file with the Clerk of the Superior Court. The pleadings and other records in this litigation including the Class Action Settlement Agreement, may be examined at any time during regular business hours at the Office of the Clerk of the San Diego County Superior Court, or by contacting Class Counsel.

**DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR
INFORMATION REGARDING THIS SETTLEMENT.**

BY ORDER OF THE SUPERIOR COURT