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[Additional Class Counsel Listed on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES — CENTRAL CIVIL WEST

Coordination Proceeding Special Title
(Rule 3.550)

**EXPRESS MESSENGER SYSTEMS
WAGE AND HOUR CASES**

Thomas Lewis v. Express Messenger Systems
(BC501521)

Eliseo Leal v. Express Messenger Systems
(BC509904)

Judicial Council Coordination Proceeding
Case No. **JCCP 4789**

Assigned for All Purposes to:
Hon. Kenneth R. Freeman,
Spring Street, Dept. SSC-14

**SUPPLEMENTAL DECLARATION OF
RAUL PEREZ IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: March 23, 2021
Time: 11:00 a.m.
Place: Department SSC-14

1 **Additional Attorneys for Plaintiffs**

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1. I am an attorney licensed to practice before all courts of the State of California. I am a Partner at Capstone Law APC (“Capstone,” and with co-counsel “Class Counsel”), counsel for Plaintiffs Thomas Lewis and Aurelio Sanchez in the above-captioned action. Unless indicated otherwise, I have personal knowledge of the following facts and if called as a witness, I could and would testify competently to them. I make this declaration in support of the Motion for Preliminary Approval of the Class Action Settlement.
2. Attached as Exhibit 1 is a true and correct copy of the fully-executed Class Action Settlement Agreement and Release.


Raul Perez

Exhibit 1

ROBERT G. HULTENG, Bar No. 071293
DAMON M. OTT, Bar No. 215392
MEL M.C. COLE, Bar No. 293265
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Attorneys for Defendant
EXPRESS MESSENGER SYSTEMS, INC., DBA
ONTRAC

ADDITIONAL COUNSEL ON FOLLOWING PAGES

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

COORDINATION PROCEEDING
SPECIAL TITLE (RULE 3.550)

Judicial Council Coordination Proceeding No.
JCCP 4789

**EXPRESS MESSENGER SYSTEMS
WAGE AND HOUR CASES**

ASSIGNED FOR ALL PURPOSES TO:
HON. KENNETH FREEMAN, SPRING
STREET, DEPT. 14

Included Actions:

**CLASS ACTION SETTLEMENT
AGREEMENT**

*Lewis v. Express Messenger Systems, Inc.,
et al.*, Los Angeles County Superior Court
No. BC501521

Complaint Filed: February 22, 2013 (*Lewis*);
FAC Filed: January 29, 2014 (*Lewis*)

*Leal v. Express Messenger Systems, Inc., et
al.*, Los Angeles County Superior Court
No. BC509904

Complaint Filed: May 23, 2013 (*Leal*)

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THOMAS LEWIS and AURELIO SANCHEZ

1 This Class Action Settlement Agreement and Release, including Exhibits A and B hereto
2 (“Settlement Agreement” or “Agreement”), is made and entered into by, between, and among
3 Plaintiffs Thomas Lewis, Aurelio Sanchez, and Eliseo Leal (“Plaintiffs”) on behalf of themselves and
4 the Settlement Class (as defined below) and the State of California Labor and Workforce Development
5 Agency (“LWDA”), on the one hand, and Defendant Express Messenger Systems, Inc., dba OnTrac (
6 “Defendant” or “OnTrac”) on the other hand. Plaintiffs and Defendant (collectively, the “Parties”)
7 enter into this Agreement to effect a full and final settlement and preclusive judgment resolving all
8 claims based on or reasonably related to the conduct alleged in the complaints filed in the actions
9 against Defendant in *Thomas Lewis and Aurelio Sanchez v. Express Messenger Systems, Inc., dba*
10 *OnTrac*, Case No: BC501521 filed in Los Angeles Superior Court on February 22, 2013, and *Eliseo*
11 *Leal v. Express Messenger Systems, Inc., dba OnTrac*, Case No: BC509904 filed in Los Angeles
12 Superior Court on May 23, 2013, and all amended complaints filed thereafter, as well as the claims
13 brought or that could have been brought in the Class Action Complaint filed in Los Angeles County
14 Superior Court on December 14, 2017 (collectively, the “Action”), and all claims based on to the facts
15 asserted therein. This Agreement is intended to fully and finally compromise, resolve, discharge, and
16 settle the Released Claims, as defined and on the terms set forth below, and to the full extent reflected
17 herein, subject to the approval of the Court.

18 I. RECITALS

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

20 1.1 WHEREAS, on February 22, 2013, Plaintiff Thomas Lewis filed a putative class action
21 complaint against Express Messenger Systems, Inc., dba OnTrac in Los Angeles Superior Court, Case
22 No. BC501521, asserting various wage-related claims, on behalf of himself and a proposed class
23 consisting of all drivers in California making deliveries for OnTrac’s clients and classified as
24 independent contractors, excluding Regional Service Providers and multiple-route drivers. The Lewis
25 Complaint alleged the following eight causes of action (1) unpaid overtime, (2) unpaid minimum
26 wages, (3) unpaid meal period premiums, (4) unpaid rest period premiums, (5) wages not timely paid
27 upon termination, (6) unpaid business expenses, (7) non-compliant wage statements, and (8) unfair
28 business practices. On February 3, 2014, Plaintiff Lewis filed a First Amended Complaint, adding

1 Plaintiff Aurelio Sanchez as a party and a cause of action for (9) violation of the Private Attorneys
2 General Act (“PAGA”).

3 1.2 WHEREAS, on May 23, 2013, Plaintiff Eliseo Leal filed a putative class action
4 complaint against Express Messenger Systems, Inc., dba OnTrac in Los Angeles Superior Court, Case
5 No. BC509904, asserting various wage-related claims, on behalf of himself and a proposed class
6 consisting of all drivers in California making deliveries for OnTrac’s clients and classified as
7 independent contractors, excluding back-up drivers. The Leal Complaint alleged the following eleven
8 causes of action (1) declaratory relief, (2) failure to pay minimum wages, (3) failure to pay wages at
9 the designated rate, (4) failure to pay overtime wages, (5) failure to reimburse expenses, (6) quantum
10 meruit/unjust enrichment, (7) failure to provide meal periods, (8) failures to provide rest periods, (9)
11 failure to timely furnish accurate itemized wage statements, (10) waiting time penalties, and (11)
12 violation of the unfair competition law.

13 1.3 WHEREAS, on August 5, 2013, the Court related the *Lewis* action and the *Leal* action,
14 and assigned the *Lewis* action as the lead action.

15 1.4 WHEREAS, Defendant denies the allegations in the Action; denies that it has engaged
16 in any wrongdoing; denies that Plaintiffs’ allegations constitute valid claims; denies that Plaintiffs’
17 claims could properly be maintained as a PAGA representative action; and states that it is entering
18 into this Settlement Agreement solely to eliminate the burden, expense, and delay of further litigation,
19 and on the express conditions that (a) if for any reason the Settlement is not finalized according to the
20 terms of this Agreement, the Settlement and the documents generated as a result of the Settlement
21 shall not be usable for any purpose in the Action, and (b) this Settlement and the documents generated
22 as a result of the Settlement are not admissible or usable in any other civil or administrative proceeding
23 or any arbitration, except to the extent necessary to enforce this Settlement and the orders, judgment
24 and agreements arising from this Settlement;

25 1.5 WHEREAS, a bona fide dispute exists as to whether any amount of wages or penalties
26 are due from Defendant to any Plaintiff, Settlement Class Member, or to the LWDA;

27 1.6 WHEREAS, while litigating the Action, the parties engaged in substantial discovery,
28 including requests for depositions, document requests, interrogatories, and requests for admission

propounded by both Plaintiffs and Defendant, and to which both responded and produced documents, and all parties provided testimony;

1.7 WHEREAS, in preparation for mediation, the Parties also engaged in informal discovery, exchanging information and reviewing and analyzing extensive data made available by Defendant, which enabled Plaintiffs and the mediator to thoroughly evaluate Plaintiffs' claims and the claims of a potential settlement class, and the likely outcomes, risks and expense of pursuing litigation;

1.8 WHEREAS, the Parties attended an in-person mediation session with professional mediator Mark Rudy, Esq., where the Parties discussed settlement terms at length with the mediator and directly for some time after, before agreeing to the terms of this arm's-length Settlement;

1.9 WHEREAS, although the parties did not reach a settlement at mediation, negotiations continued at arms-length, and on October 6, 2020, counsel for both parties executed a Memorandum of Understanding that contained the preliminary terms of this Settlement Agreement.

1.10 WHEREAS, Plaintiffs and Class Counsel believe that the Settlement provides a favorable recovery for the Settlement Class, based on the claims asserted, the evidence developed, and the damages that might be proven against Defendant in the Action. Plaintiffs and Class Counsel further recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Action against Defendant through trial and appeals. They also have considered the uncertain outcome and the risk of any litigation, especially in complex litigation such as the Action, as well as the difficulties and delays inherent in any such litigation. They are also mindful of the inherent challenges of proof and the strength of the defenses to the alleged claims, and therefore believe that it is desirable that the Released Claims be fully and finally compromised, settled, and resolved with prejudice as set forth herein, subject to the approval of the Court;

1.11 WHEREAS, Plaintiffs and Class Counsel, based on their own independent investigations and evaluations, have examined the benefits to be obtained under the terms of this Settlement Agreement, have considered the claims of Plaintiffs, the claims of Settlement Class Members, the risks associated with the continued prosecution of the Action, and the likelihood of success on the merits of the Action, and believe that, after considering all the circumstances, including the uncertainties surrounding the risk of further litigation and the defenses that defendant has asserted

1 and could assert, the proposed Settlement set forth in this Agreement is fair, reasonable, adequate, in
2 the best interests of Plaintiffs and the Settlement Class, and confers substantial benefits upon the
3 Settlement Class;

4 1.12 WHEREAS, Plaintiffs warrant and represent that they are effecting this Settlement and
5 executing this Agreement after having received full legal advice as to their respective rights and have
6 had the opportunity to obtain independent counsel to review this Agreement;

7 1.13 WHEREAS, the Parties further agree that the Agreement, the fact of this Settlement,
8 and any of the terms of this Agreement, and any documents filed in connection with the Settlement
9 shall not constitute, or be offered, received, claimed, construed, or deemed as, an admission, finding,
10 or evidence of: (i) any wrongdoing, (ii) any violation of any statute or law, (iii) any liability on the
11 claims or allegations in the Action on the part of any Released Parties, or (iv) the propriety of certifying
12 a litigation class or pursuing representative relief under the PAGA in the Action or any other
13 proceeding; and shall not be used by any person for any purpose whatsoever in any legal proceeding,
14 including but not limited to arbitrations, and/or other civil and/or administrative proceedings, other
15 than a proceeding to enforce the terms of the Agreement. There has been no final determination by
16 any court as to the merits of the claims asserted by Plaintiffs against Defendant, nor has there been
17 any final determination as to whether PAGA representative claims may properly be pursued, other
18 than for settlement purposes only;

19 1.14 WHEREAS, for settlement purposes only, Defendant will stipulate to the certification
20 of class claims that are subject to the certification requirements of California Code of Civil Procedure
21 Section 382. Defendant disputes that certification beyond those claims already certified is proper for
22 the purposes of litigating the class claims proposed in or flowing from the claims asserted in the
23 Action;

24 1.15 WHEREAS, the Parties desire to compromise and settle all issues and claims that were
25 or could have been brought against defendant based on the facts alleged in the operative complaint,
26 including all claims brought on behalf of the putative class and PAGA representative basis in the
27 Action;
28

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

II. DEFINITIONS

Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings set forth below:

2.1 “Active Settlement Periods” means the best approximation of the total number of periods in which a Settlement Class Member received a payment via Subcontracting Concepts, Inc. (“SCI”) (referred to internally by SCI as settlement payments – unrelated to this Settlement Agreement), based on the records and data maintained by SCI, for each Settlement Class Member from the time period between February 22, 2009 and the date of preliminary approval.

2.2 “Class Counsel” means Marlin & Saltzman LLP, Capstone Law APC, The Hamideh Firm, P.C., and James Hawkins APLC.

2.3 “Class Counsel Award” means (i) the attorneys’ fees for Class Counsel’s litigation and resolution of the Action, and all claims resolved by this Settlement, as awarded by the Court, which will be paid exclusively from the Total Settlement Amount, and may not exceed forty percent (40%) of the Total Settlement Amount and (ii) all expenses and costs incurred by Class Counsel in litigation and resolution of the Action, and all claims resolved by this Settlement, in the amount of \$225,000, which will be paid exclusively from the Total Settlement Amount. To the extent that any amount of the Class Counsel Award is not awarded by the Court, that amount shall be redistributed to the Settlement Class Members pro rata as part of their Individual Settlement Payments.

2.4 “Class Information” means information regarding Settlement Class Members that will in good faith be compiled from the records Subcontracting Concepts, Inc. (a third party provider engaged by OnTrac to provide payment services to Class Members’ Regional Service Providers), and provided to the Settlement Administrator. Class Information shall be provided in a Microsoft Excel spreadsheet and shall include, if possible, for each Settlement Class Member: full name, last known

1 address, social security number, and Active Settlement Periods. Because Settlement Class Members’
2 private information is included in the Class Information, Class Counsel and the Settlement
3 Administrator shall maintain any Class Information received in confidence and shall use and disclose
4 Class Information only for purposes of this Settlement and for no other purpose, and pursuant to the
5 restrictions as described in Paragraph 5.4. Further, within the Settlement Administrator’s operations,
6 access shall be limited to those personnel with a need to use the Class Information as part of the
7 administration of the Settlement.

8 2.5 “Class Notice” means the notice of class action settlement to be provided to Settlement
9 Class Members, without material variation from the relevant portion of Exhibit A.

10 2.6 “Court” means the Los Angeles County Superior Court of California.

11 2.7 “Effective Date” means one (1) day after which both of the following events have
12 occurred: (i) the Court’s Final Approval order has been entered and (ii) the Court’s Final Approval
13 order and Judgment have become Final.

14 2.8 “Exclusion/Written Objection Deadline” means the final date by which a Settlement
15 Class Member may either (i) submit a written objection to any aspect of the Settlement, or (ii) request
16 to be excluded from the Settlement. The Exclusion/Written Objection Deadline shall be forty-five
17 (45) days after the Notice Date, and shall be specifically identified and set forth in the Preliminary
18 Approval Order and the Class Notice.

19 2.9 “Final” when referring to a judgment or order, means that (i) the judgment is a final,
20 appealable judgment; and (ii) either (a) no appeal has been taken from the judgment as of the date on
21 which all times to appeal therefrom have expired (i.e., 60 calendar days from entry of judgment), or
22 (b) an appeal or other review proceeding of the judgment having been commenced, such appeal or
23 other review is finally concluded and no longer is subject to review by any court, whether by appeal,
24 petitions for rehearing or re-argument, petitions for re-hearing en banc, petitions for writ of certiorari,
25 or otherwise, and such appeal or other review has been finally resolved in such manner that affirms
26 the judgment order in its entirety, and remittitur has been issued.

27 2.10 “Final Approval” means the Court’s entry of a Final Approval order finally approving
28 this Settlement.

2.11 “Final Approval Hearing” means the hearing at or after which the Court will make a final decision as to whether the Settlement is fair, reasonable, and adequate, and therefore, finally approved by the Court.

2.12 “Individual Settlement Payment” means the amount payable from the Total Settlement Amount to each Settlement Class Member who does not opt out, which shall be issued as non-wages, for which an IRS Form 1099 shall issue if required. The Individual Settlement Payment(s) shall be calculated pursuant to Section V herein.

2.13 “Judgment” means the judgment to be entered in the Action on Final Approval of this Settlement.

2.14 “Legally Authorized Representatives” means an administrator/administratrix, personal representative, or executor/executrix of a deceased Settlement Class Member’s estate; a guardian, conservator, or next friend of an incapacitated Settlement Class Member; or any other legally appointed person responsible for handling the business affairs of a Settlement Class Member.

2.15 “Named Plaintiffs’ General Released Claims” means any and all past, present, and future claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or liabilities, of any nature and description whatsoever, known or unknown, existing or potential, recognized now or hereafter, expected or unexpected, pursuant to any theory of recovery (including but not limited to those based in contract or tort, common law or equity, federal, state, or local law, statute, ordinance, or regulation), and for claims for compensatory, consequential, punitive or exemplary damages, statutory damages, penalties, interest, attorneys’ fees, costs or disbursements, against the Released Parties, including unknown claims covered by California Civil Code section 1542, as quoted below in Paragraph 9.4, by the Plaintiffs, arising during the period from the beginning of the Plaintiffs’ first interaction with any defendant to the date on which the Court enters the order of Final Approval of this Settlement, for any type of relief that can be released as a matter of law, including, without limitation, claims for wages, damages, unpaid costs, penalties (including civil and waiting time penalties), liquidated damages, punitive damages, interest, attorneys’ fees, litigation costs, restitution, or injunctive, declaratory or equitable relief, with the exception of any claims which cannot be released as a matter of law. Plaintiffs will generally release all known and unknown claims

1 against the Released Parties, and waive the application of section 1542 of the California Civil Code.
2 The claims released pursuant to this paragraph include but are not limited to the Settlement Class
3 Members' Released Claims, as well as any other claims under any provision of the Fair Labor
4 Standards Act, the California Labor Code, the California Code of Regulations, or any applicable
5 California Industrial Welfare Commission Wage Order(s), and claims under state or federal
6 discrimination statutes, including, without limitation the California Fair Employment and Housing
7 Act, California Government Code section 12940 *et seq.*; the California Constitution; Title VII of the
8 Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq.*; the Americans with Disabilities Act, 42 U.S.C. §
9 12101 *et seq.*; the Age Discrimination in Employment Act of 1967, as amended; the Employee
10 Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*; and all of their implementing
11 regulations and interpretive guidelines.

12 2.16 "Notice Date" means the date of the initial distribution of the Class Notice to Settlement
13 Class Members, as set forth in Section VI.

14 2.17 "Opt Out List" means the Court-approved list of all persons who timely and properly
15 request exclusion from the Settlement Class.

16 2.18 "PAGA Claims" means the Plaintiffs' representative claims seeking civil penalties
17 pursuant to PAGA, as alleged in the Action and based on all provisions of the Labor Code, Wage
18 Orders or any other statute or regulation identified in the Action to the fullest extent permitted by law.

19 2.19 "PAGA Payment" means a total payment of \$200,000 to settle all claims under the
20 PAGA. From this amount, 75% will be paid to the LWDA for civil penalties pursuant to the PAGA
21 and 25% will be distributed to all Settlement Class Members, and considered penalties for tax reporting
22 purposes.

23 2.20 "Plaintiffs" means Thomas Lewis, Aurelio Sanchez, and Eliseo Leal.

24 2.21 "Plan of Allocation" means the plan for allocating the Total Settlement Amount
25 between and among Settlement Class Members as approved by the Court.

26 2.22 "Preliminary Approval Date" means the date that the Court enters the Preliminary
27 Approval Order and thus: (i) preliminarily approves the Settlement, and the exhibits thereto, and (ii)
28 enters an order providing for notice to the Settlement Class, an opportunity to opt out of the Settlement

1 Class, an opportunity to submit timely and proper objections to the Settlement, and setting a hearing
2 on the fairness of the terms of Settlement, including approval of the Class Counsel Award.

3 2.23 “Preliminary Approval Order” means the order that Plaintiffs and Defendant will seek
4 from the Court, without material variation from Exhibit B. Entry of the Preliminary Approval Order
5 shall constitute preliminary approval of the Settlement Agreement.

6 2.24 “Released Claims” means (i) Settlement Class Members’ Released Claims and (ii)
7 Named Plaintiffs’ General Released Claims.

8 2.25 “Released Parties” means Defendant OnTrac, as well as Subcontracting Concepts, Inc.
9 (a third party provider designated by OnTrac to provide services to Class Members) and their
10 subsidiaries, officers, directors, members, partners, owners, shareholders, employees, former
11 employees, agents, servants, attorneys, assigns, affiliates, independent contractors, volunteers,
12 predecessors, successors, parent companies and organizations, insurers, and any and all other persons,
13 firms and corporations in which Defendant OnTrac and Subcontracting Concepts, Inc. may have an
14 interest.

15 2.26 “Service Awards” means the amounts approved by the Court to be paid to each of the
16 Plaintiffs, in addition to each Plaintiffs’ respective Individual Settlement Payment(s), in recognition
17 of their efforts in coming forward as named plaintiffs and as consideration for a full, general, and
18 comprehensive release of the Named Plaintiffs’ General Released Claims. The Service Awards
19 amount payable to Plaintiffs shall come exclusively from the Total Settlement Amount and are not to
20 exceed \$15,000 each. To the extent that any amount of the Service Awards are not awarded by the
21 Court, that amount will be redistributed pro rata to the Settlement Class Members as part of their
22 Individual Settlement Payments.

23 2.27 “Settlement” means the settlement of the Action between and among Plaintiffs and
24 Defendant, as set forth in this Settlement Agreement.

25 2.28 “Settlement Administrator” means CPT Group, Inc.

26 2.29 “Settlement Administrator Expenses” means the amount to be paid to the Settlement
27 Administrator exclusively from the Total Settlement Amount, including the total costs, expenses, and
28 fees of the Settlement Administrator. The amount is not to exceed \$40,000 for approximately 9,000

1 Settlement Class Members. To the extent that any amount of the Settlement Administrator Expenses
2 are not awarded by the Court, that amount will be redistributed pro rata to the Settlement Class
3 Members as part of their Individual Settlement Payments.

4 2.30 “Settlement Class” means all individuals who personally performed last-mile delivery
5 and pickup services for OnTrac in California, who were designated as independent contractors during
6 the Settlement Period. Excluded from the class definition are (1) individuals designated as Regional
7 Service Providers during the time they were designated as Regional Service Providers, (2) individuals
8 who have previously released claims arising from their alleged misclassification as independent
9 contractors.

10 2.31 “Settlement Class Member” means any member of the Settlement Class.

11 2.32 “Settlement Class Members’ Released Claims” means any and all present and past
12 claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or liabilities, of
13 any nature and description whatsoever, known or unknown, existing or potential, recognized now or
14 hereafter, expected or unexpected, pursuant to any theory of recovery (including those based in
15 contract or tort, common law or equity, federal, state, or local law, statute, ordinance, or regulation,
16 and for claims for compensatory, consequential, punitive or exemplary damages, statutory damages,
17 penalties, interest, attorneys’ fees, costs, or disbursements) based on or reasonably related to the
18 conduct alleged in the Complaint during the Settlement Period, and specifically to claims pursuant to
19 California Labor Code sections 201-204, 206.5, 207, 208, 210-214, 216, 218, 218.5, 218.6, 221, 225.5,
20 226, 226.2, 226.3, 226.7, 226.8, 227.3, 432. 432.5, 510, 512, 551-553, 558, 1174, 1174.5, 1182.12,
21 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2750.3, 2753, 2800, 2802, 2698 et seq. (PAGA Claims),
22 and 3700 et seq.; Cal. Code of Regulations, tit. 8, § 11090; California Business and Professions Code
23 sections 17200 et seq.; and any other similar California state or federal law, for non-payment of wages,
24 minimum wages, overtime wages (including regular rate calculations), expense reimbursement, wage
25 statements, failure to provide workers’ compensation insurance, meal periods, rest breaks, final pay,
26 waiting time penalties, PAGA penalties, restitution, interest, costs and expenses, attorneys’ fees,
27 declaratory relief, injunctive relief, liquidated damages, exemplary or punitive damages, civil
28 penalties, equitable remedies, and/or pre- or post-judgment interest. “Settlement Class Members’

Released Claims” do not include claims that, as a matter of law cannot be released. The “Settlement Class Members’ Released Claims” are released from February 22, 2009 through preliminary approval of this Settlement.

2.33 “Settlement Class Period” means February 22, 2009 through preliminary approval of this Settlement.

2.34 “Total Settlement Amount” means Ten Million Five Hundred Thousand Dollars (\$10,500,000), for payment of all claims, which is the maximum amount that Defendant is obligated to pay under this Settlement Agreement under any circumstances in order to resolve and settle the Action, subject to Court approval. The Total Settlement Amount includes all costs and fees, including, but not limited to, the Class Counsel Award, Settlement Administrator Expenses, escrow costs and expenses, Service Awards, interest, and taxes and tax expenses.

2.35 “Void Date” means the date by which any checks issued to Settlement Class Members shall become void, *i.e.* on the 181st day after mailing.

III. SUBMISSION OF THE SETTLEMENT AGREEMENT TO THE COURT FOR PRELIMINARY AND FINAL APPROVAL

3.1 Upon execution of this Settlement Agreement, Plaintiffs shall submit to the Court a motion for preliminary approval of the Settlement. The motion for preliminary approval shall include a proposed plan for sending of the Class Notice to Settlement Class Members within sixty (60) days after the Preliminary Approval Date (the Notice Date), and establishing a period of (45) days from the Notice Date within which any Settlement Class Member may (i) request exclusion from the Settlement Class, (ii) object to the proposed Settlement or any part thereof, (iii) object to Class Counsel’s request for the Class Counsel Award and for the Service Awards to the Plaintiffs (the Exclusion/Written Objection Deadline).

3.2 The Parties stipulate to certification of the Settlement Class under California Code of Civil Procedure Section 382, for settlement purposes only, excluding the Settlement Class’s PAGA Claims. The Parties agree that this stipulation shall not be admissible in, and may not be used by any person for any purpose whatsoever in any legal proceeding, including but not limited to any

1 arbitrations and/or any civil and/or administrative proceedings, other than a proceeding to enforce the
2 terms of the Agreement, as further set forth in this Agreement.

3 3.3 Class Counsel agrees to keep any and all data and other financial and personal
4 information related to the Settlement Class in the strictest confidence, and shall not disclose that data.
5 Any such data provided to Class Counsel shall be treated as privileged mediation communications
6 under Cal. Evid. Code §§ 1115 *et seq.* and designated “Confidential—Attorneys’ Eyes Only,” except
7 to the extent absolutely necessary (as agreed between the Parties) for approval of the Settlement. Class
8 Counsel agrees to submit such necessary data and information to the Court under seal to the extent
9 appropriate under governing law.

10 3.4 The Parties stipulate to the form of, and agree to submit to the Court for its
11 consideration this Settlement Agreement, and the following Exhibits to this Settlement Agreement:
12 Class Notice (Exhibit A); and [Proposed] Preliminary Approval Order (Exhibit B).

13 3.5 Solely for purposes of implementing this Agreement and effectuating the proposed
14 Settlement, the Parties agree and stipulate that:

15 3.5.1 The Court may enter the Preliminary Approval Order, without material
16 variation from Exhibit B, preliminarily approving the Settlement and this Agreement. Among other
17 things, the Preliminary Approval Order shall grant leave to preliminarily certify the Settlement Class
18 for settlement purposes only; approve the Plaintiffs as class representatives, appoint Class Counsel to
19 represent the Settlement Class, and appoint the Settlement Administrator; approve the Class Notice,
20 and the class notice plan embodied in the Settlement Agreement, and approve them as consistent with
21 California Rules of Court 3.766(d) and 3.769(f) and due process; set out the requirements for disputing
22 the information upon which Settlement Class Members’ share of the Settlement will be calculated,
23 objecting to the Settlement, excluding Settlement Class Members who timely and properly request to
24 be excluded from the Settlement Class, all as provided in this Agreement; and provide that certification
25 and all actions associated with certification are undertaken on the condition that the certification and
26 other actions shall be automatically vacated and of no force or evidentiary effect if this Agreement is
27 terminated or disapproved, as provided in this Agreement.

1 3.6 Within 10 days of the Final Approval Date, Class Counsel will notify the LWDA of
2 the Preliminary Approval Order.

3 3.7 At the Final Approval Hearing, Plaintiffs shall request entry of a Final Approval order
4 and a Judgment, to be agreed upon by the Parties, the entry of which is a material condition of this
5 Settlement and that, among other things:

6 3.7.1 Finally approves the Settlement as fair, reasonable, and adequate and directs its
7 consummation pursuant to the terms of the Settlement Agreement;

8 3.7.2 Finds that Class Counsel and Plaintiffs adequately represented the Settlement
9 Class for the purpose of entering into and implementing the Agreement;

10 3.7.3 Re-confirms the appointment of the Settlement Administrator and finds that the
11 Settlement Administrator has fulfilled its duties under the Settlement to date;

12 3.7.4 Finds that the Class Notice (i) constituted the best practicable notice; (ii)
13 constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class
14 Members of the pendency of the Action, and their right to exclude themselves from or object to the
15 proposed settlement and to appear at the Final Approval Hearing; (iii) was reasonable and constituted
16 due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) met all applicable
17 requirements of California Rules of Court 3.766(d) and 3.769(f), due process, and any other applicable
18 rules or law;

19 3.7.5 Approves the Opt-Out List and determines that the Opt-Out List is a complete
20 list of all Settlement Class Members who have timely and properly requested exclusion from the
21 Settlement Class and, accordingly, shall neither share in nor be bound by the Final Approval order and
22 Judgment;

23 3.7.6 Directs that the Final Approval order and Judgment shall be final and entered
24 forthwith;

25 3.7.7 Without affecting the finality of the Final Approval order and Judgment, directs
26 that the Court retains continuing jurisdiction over Plaintiffs, the Settlement Class, and Defendant as to
27 all matters concerning the administration, consummation, and enforcement of this Settlement
28 Agreement;

1 3.7.8 Adjudges that, as of the Final Approval Date, Plaintiffs, and all Settlement Class
2 Members who have not been excluded from the Settlement Class as provided in the Opt-Out List
3 approved by the Court, and their Legally Authorized Representatives, heirs, estates, trustees,
4 executors, administrators, principals, beneficiaries, representatives, agents, assigns, and successors,
5 and/or anyone claiming through them or acting or purporting to act for them or on their behalf,
6 regardless of whether they have received actual notice of the proposed Settlement, have conclusively
7 compromised, settled, discharged, and released the Named Plaintiffs' General Released Claims (in the
8 case of Plaintiffs) and Settlement Class Members' Released Claims (in the case of the Settlement Class
9 Members) against Defendant and the Released Parties, and are bound by the provisions of this
10 Agreement;

11 3.7.9 Affirms that, notwithstanding the submission of a timely and proper request for
12 exclusion, Settlement Class Members will still be bound by the settlement and release of the PAGA
13 Claims under the Final Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009) as
14 requests for exclusion do not apply to the PAGA Claims, and further affirms that any claim by the
15 LWDA for civil penalties pursuant to PAGA are also extinguished;

16 3.7.10 Declares this Agreement and the Final Approval order and Judgment to be
17 binding on, and have res judicata and preclusive effect as to all pending and future lawsuits or other
18 proceedings: (i) that encompass the Named Plaintiffs' General Released Claims and that are
19 maintained by or on behalf of Plaintiffs and/or their Legally Authorized Representatives, heirs, estates,
20 trustees, executors, administrators, principals, beneficiaries, representatives, agents, assigns, and
21 successors, and/or anyone claiming through them or acting or purporting to act for them or on their
22 behalf, and (ii) that encompass the Settlement Class Members' Released Claims and that are
23 maintained by or on behalf of any Settlement Class Member who has not been excluded from the
24 Settlement Class as provided in the Opt-Out List approved by the Court and/or their Legally
25 Authorized Representatives, heirs, estates, trustees, executors, administrators, principals,
26 beneficiaries, representatives, agents, assigns, and successors, and/or anyone claiming through them
27 or acting or purporting to act for them or on their behalf, regardless of whether the Settlement Class
28 Member previously initiated or subsequently initiates individual litigation or other proceedings

1 encompassed by the Settlement Class Members' Released Claims, and even if such Settlement Class
2 Member never received actual notice of the Action or this proposed Settlement;

3 3.7.11 Determines that the Agreement and the Settlement provided for herein, and any
4 proceedings taken pursuant thereto, are not, and should not in any event be offered, received, or
5 construed as evidence of, a presumption, concession, or an admission by any Party of liability or non-
6 liability or of the certifiability or non-certifiability of a litigation class, or that PAGA representative
7 claims may validly be pursued, or of any misrepresentation or omission in any statement or written
8 document approved or made by any Party; provided, however, that reference may be made to this
9 Agreement and the Settlement provided for herein in such proceedings as may be necessary to
10 effectuate the provisions of this Agreement, as further set forth in this Agreement;

11 3.7.12 Orders that the preliminary approval of the Settlement, certification of the
12 Settlement Class and final approval of the proposed Settlement, and all actions associated with them,
13 are undertaken on the condition that they shall be vacated if the Settlement Agreement is terminated
14 or disapproved in whole or in part by the Court, or by any appellate court and/or other court of review,
15 in which event the Agreement and the fact that it was entered into shall not be offered, received, or
16 construed as an admission or as evidence for any purpose, including but not limited to an admission
17 by any Party of liability or non-liability or of any misrepresentation or omission in any statement or
18 written document approved or made by any Party, or of the certifiability of a litigation class or the
19 appropriateness of maintaining a PAGA representative action, as further provided in this Settlement
20 Agreement;

21 3.7.13 Authorizes the Parties, without further approval from the Court, to mutually
22 agree to and adopt such amendments, modifications, and expansions of this Agreement, including all
23 Exhibits hereto, as (i) shall be consistent in all material respects with the Final Approval order and (ii)
24 do not limit the rights of Settlement Class Members; and

25 3.7.14 Contains such other and further provisions consistent with the terms of this
26 Settlement Agreement to which the Parties expressly consent in writing.

27 3.8 At the Final Approval Hearing and as a part of the final approval of this Settlement,
28 Class Counsel will also request approval of the Plan of Allocation set forth in Section V. Any

1 modification to the Plan of Allocation by the Court shall not (i) affect the enforceability of the
2 Settlement Agreement, (ii) provide any of the Parties with the right to terminate the Settlement
3 Agreement, or (iii) impose any obligation on the Defendant or any Released Party to increase the
4 consideration paid in connection with the Settlement.

5 3.9 At the Final Approval Hearing, Class Counsel may also request entry of an Order
6 approving the Class Counsel Award and the Service Awards to the Plaintiffs, which shall be paid
7 exclusively from the Total Settlement Amount and in accordance with the distribution plan described
8 in Section V. In no event shall any Released Party otherwise be obligated to pay for any attorneys'
9 fees and expenses or any Service Award. The disposition of Class Counsel's application for a Class
10 Counsel Award, and for the Service Award, is within the sound discretion of the Court and is not a
11 material term of this Settlement Agreement, and it is not a condition of this Settlement Agreement that
12 such application be granted. Any disapproval or modification of such application by the Court shall
13 not (i) affect the enforceability of the Settlement Agreement, (ii) provide any of the Parties with the
14 right to terminate the Settlement Agreement, or (iii) increase the consideration Defendant or any
15 Released Party pays in connection with the Settlement. Released Parties shall have no liability to
16 Class Counsel arising from any claim regarding the division of the Class Counsel Award between and
17 among Class Counsel or any other counsel representing Plaintiffs or the Settlement Class Members.

18 3.10 Within 10 days after entry of Judgment, Class Counsel will provide a copy of the
19 Judgment to the LWDA.

20 3.11 In no event shall Defendant or any Released Party be obligated to pay Settlement
21 Administrator Expenses beyond those provided for in this Agreement.

22 **IV. SETTLEMENT CONSIDERATION**

23 4.1 The total consideration for the Settlement from Defendant is the Total Settlement
24 Amount (\$10,500,000). The Total Settlement Amount is an "all in" number that includes, without
25 limitation, all monetary benefits and payments to the Settlement Class, Service Awards, Class Counsel
26 Award, Settlement Administrator Expenses, the PAGA Payment, and all claims for interest, fees, and
27 costs, with the sole exception of the employer-side employment taxes for the wage portion of the
28 settlement. Under no circumstances shall Defendant be required to pay anything more than the Total

1 Settlement Amount. In no event shall Defendant be liable for making any payments under this
2 Settlement, or for providing any relief to Settlement Class Members, before the deadlines set forth in
3 this Agreement.

4 4.2 The Total Settlement Amount was calculated with, and is premised on, the
5 understanding that there are approximately 8,750 Class Members eligible to participate in the
6 Settlement. If the number of Class Members stated in this paragraph increases by more than 7% of
7 this estimate, then the Total Settlement Amount will be increased by the same proportion above 7%.

8 4.3 Plaintiffs and all Settlement Class Members who receive any Individual Settlement
9 Payment and/or Service Award from the Total Settlement Amount expressly acknowledge that such
10 payments shall be considered non-wages for which an IRS Form 1099 will be issued, if required.
11 Plaintiffs and all Settlement Class Members who receive a payment of any kind from the Total
12 Settlement Amount agree to timely pay in full all of the federal, state, and municipal income taxes
13 owed on such payments.

14 4.4 The terms of this Agreement relating to the Service Awards and Class Counsel Award
15 were not negotiated by the Parties before full agreement was reached as to all other material terms of
16 the proposed Settlement, including, but not limited to, any terms relating to the relief to the Settlement
17 Class. Defendant agrees not to oppose a request for the Service Awards for Plaintiffs, as awarded by
18 the Court, up to a maximum of \$15,000 each. Plaintiffs and Class Counsel agree not to seek any
19 Service Award in excess of the above amount.

20 4.5 Class Counsel agrees not to seek an award from the Court in excess of forty percent
21 (40%) of the Total Settlement Amount in attorneys' fees nor in excess of \$225,000 in costs and
22 expenses. Defendant agrees not to oppose a request for attorneys' fees, costs and expenses so long as
23 it does not exceed the amounts set forth above. Any amount awarded as the Class Counsel Award
24 shall be inclusive of any and all amounts due to or claimed by any and all counsel representing
25 Plaintiffs. Released Parties and Settlement Class Members shall have no obligation regarding, or
26 liability for, allocation or payment of the Class Counsel Award. Class Counsel shall file any request
27 for attorneys' fees, costs and expenses and any request for Service Awards no later than 16 court days
28 before the Final Approval Hearing.

1 4.6 The Settlement Administrator shall wire each Class Counsel their respective share of
2 the Class Counsel Award from the Total Settlement Amount. Class Counsel shall provide the
3 Settlement Administrator notice of receipt of the Class Counsel Award. Released Parties shall have
4 no liability to Class Counsel or any other counsel for Plaintiffs or any Settlement Class Member arising
5 from any claim regarding the division of the Class Counsel Award.

6 **V. FUNDING AND ALLOCATION OF THE SETTLEMENT**

7 5.1 Within thirty (30) calendar days of the Effective Date, Defendant shall provide the
8 Total Settlement Amount to the Settlement Administrator. Subject to Court approval, the Total
9 Settlement Amount shall be allocated to pay the Settlement Administrator Expenses; Plaintiffs'
10 Service Awards; the Class Counsel Award; seventy-five percent (75%) of the PAGA Payment to the
11 LWDA; and all remaining funds allocated to the Individual Settlement Payments to Settlement Class
12 Members who did not opt out.

13 5.2 To receive a payment from the Settlement, a Settlement Class Member must not have
14 submitted a request for exclusion from the Settlement. Settlement Class Members are not eligible to
15 receive any compensation from the Settlement other than the Individual Settlement Payment(s).

16 5.3 The amount of each Settlement Class Member's Individual Settlement Payment(s) will
17 be distributed from the Total Settlement Amount and calculated in direct proportion to SCI's best
18 estimate of each Settlement Class Member's Active Settlement Periods, as determined from the Class
19 Information provided to the Settlement Administrator by Defendant. Class Counsel will be permitted
20 to review and approve the calculation of settlement funds to be distributed, pursuant to the restrictions
21 in Paragraph 5.4. All Settlement Class Members will receive an Individual Settlement Payment, and
22 without the need to submit claims for payment.

23 5.4 The Settlement Administrator may provide Class Counsel with a version of the Class
24 List that includes solely a unique identifying number for each individual and their pay periods worked,
25 but not contain any Settlement Class Member's name, social security number, nor last known address
26 nor any other identifying information. In the event a dispute arises with respect to any Settlement
27 Class Member's data in connection with administration of the Settlement, the Settlement
28

1 Administrator is authorized to provide Class Counsel with the name, social security and last known
2 contact information of the Settlement Class Member who is the subject of the dispute.

3 5.5 In the event that any checks mailed to Settlement Class Members remain uncashed after
4 the Void Date, then any such funds shall be transmitted by the Settlement Administrator pursuant to
5 governing California law to the State of California Unclaimed Property Fund, to be held there in the
6 name of and for the benefit of such class members under California's escheatment laws.

7 5.6 At no point shall any amount from the Total Settlement Amount revert back to
8 Defendant.

9 5.7 The Settlement Administrator shall issue the Individual Settlement Payments from the
10 Total Settlement Amount to each Settlement Class Member who does not opt out. Each Individual
11 Settlement Payment shall be reported by the Settlement Administrator to the applicable governmental
12 authorities on IRS Form 1099s, if required. The portions allocated to Plaintiffs' Service Awards shall
13 also be reported on IRS Form 1099s. The Settlement Administrator shall be responsible for issuing
14 respective copies of IRS Form 1099s for the Plaintiffs and Settlement Class Members who received
15 and cashed their respective Individual Settlement Payments.

16 **VI. CLASS NOTICE PROCEDURES**

17 6.1 No more than fifteen (15) business days after entry of the Preliminary Approval Order,
18 Defendant shall provide the Settlement Administrator with the Class Information for purposes of
19 sending the Class Notice to Settlement Class Members.

20 6.2 The Class Notice will include a statement to each Settlement Class Member containing
21 their Active Settlement Periods being used to calculate the amount of their Settlement Payment as
22 described in Paragraph 5.3, and inform Settlement Class Members of their right to request exclusion
23 from the Settlement, of their right to object to the Settlement, of their right to dispute the information
24 upon which their share of the Settlement will be calculated, and the claims to be released.

25 6.3 As set forth in the Class Notice, Settlement Class Members will be provided forty-five
26 (45) days after mailing of the Class Notice and accompanying statement to disagree with SCI's
27 calculation of their total Active Settlement Periods by providing documentation to the Settlement
28 Administrator. The Settlement Administrator shall review any documentation submitted by a

1 Settlement Class Member and consult with the Parties to determine whether an adjustment is
2 warranted. There will be a presumption that SCI's records are correct, absent evidence produced by
3 a Settlement Class Member to the contrary. The Settlement Administrator's determination of the
4 amount of any Settlement Class Member's Active Settlement Periods shall be binding upon the
5 Settlement Class Member and the Parties, and a Settlement Class Member's Individual Settlement
6 Payment will be calculated according to the Settlement Administrator's determination.

7 6.4 No more than sixty (60) days after entry of the Preliminary Approval Order, provided
8 Defendant timely complied with its obligation in Paragraph 6.1, the Settlement Administrator shall
9 send a copy of the Class Notice by U.S. mail to each potential Settlement Class Member (the Notice
10 Date).

11 6.5 If any Class Notice sent via U.S. mail to any potential Settlement Class Member is
12 returned to the Settlement Administrator with a forwarding address, the Settlement Administrator shall
13 forward the postal mailing to that address. If the Settlement Administrator is not provided a
14 forwarding address, the Settlement Administrator shall make a good-faith search of an appropriate
15 database, as described in Paragraph 6.6, and postal mailings shall be resent, re-mailed, and/or
16 forwarded to any new postal mail address obtained through the methods described in Paragraph 6.6.
17 In the event that any Class Notice is returned as undeliverable a second time, no further efforts shall
18 be required. The Settlement Administrator shall maintain a log detailing the instances Class Notices
19 are returned as undeliverable.

20 6.6 Before any mailing to an address besides that listed in the Class Information, the
21 Settlement Administrator shall make a good-faith attempt to obtain the most-current names and postal
22 mail addresses for all potential Settlement Class Members to receive such postal mail, including (1)
23 cross-checking the names and/or postal mail addresses it received from SCI, (2) reviewing the
24 addresses with the National Change of Address Database and (3) performing further reasonable
25 searches (e.g., through Lexis/Nexis) for more-current names and/or postal mail addresses for
26 Settlement Class Members. All Settlement Class Members' names and postal mail addresses obtained
27 through these sources shall be protected as confidential and not used for purposes other than the notice
28 and administration of this Settlement. The address determined by the Settlement Administrator as the

1 current mailing address through this process shall be presumed to be the best mailing address for the
2 applicable Settlement Class Member.

3 6.7 The Parties agree that the procedures set forth in this Section constitute reasonable and
4 the best practicable notice under the circumstances and an appropriate and sufficient effort to locate
5 current addresses for Settlement Class Members such that no additional efforts to do so shall be
6 required.

7 6.8 At least twenty-one (21) days before the Final Approval Hearing, the Settlement
8 Administrator shall prepare a declaration of due diligence and proof of dissemination with regard to
9 the mailing of the Class Notice, and any attempts by the Settlement Administrator to locate Settlement
10 Class Members, its receipt of valid requests for exclusion, and its inability to deliver the Class Notice
11 to Settlement Class Members due to invalid addresses (“Due Diligence Declaration”), to Class
12 Counsel and counsel for Defendant for presentation to the Court. Class Counsel shall be responsible
13 for filing the Due Diligence Declaration with the Court.

14 6.9 If any individual whose name does not appear in the Class Information that SCI
15 provides the Settlement Administrator (and who has not previously opted out of the Settlement Class),
16 believes that they are a Settlement Class Member, they shall have the opportunity to dispute their
17 exclusion from the Settlement Class, prior Final Approval. If an individual believes they are a
18 Settlement Class Member, they must notify the Settlement Administrator within a reasonable amount
19 of time after the Notice Date, but under no circumstances after Final Approval. The Parties will meet
20 and confer regarding any such individuals in an attempt to reach an agreement as to whether any such
21 individual should be regarded as a Settlement Class Member. If the Parties so agree, the Settlement
22 Administrator will provide a Class Notice to the individual, and treat the individual as a Settlement
23 Class Member for all other purposes. Such an individual will have all of the same rights as any other
24 Settlement Class Member under this Agreement.

25 **VII. PROCEDURES FOR REQUESTS FOR EXCLUSION**

26 7.1 Settlement Class Members (with the exception of Plaintiffs) may opt out of the
27 Settlement. Those who wish to exclude themselves (or “opt out”) from the Settlement Class must
28 submit timely, written requests for exclusion. To be effective, such a request must include the

1 Settlement Class Member's name, address, and telephone number; a clear and unequivocal statement
2 that the Settlement Class Member wishes to be excluded from the Settlement Class; and the signature
3 of the Settlement Class Member. The request must be mailed to the Settlement Administrator at the
4 address provided in the Class Notice and must be postmarked no later than the Exclusion/Written
5 Objection Deadline. The date of the postmark shall be the exclusive means used to determine whether
6 a request for exclusion has been timely submitted. Requests for exclusion must be exercised
7 individually by the Settlement Class Member. Attempted collective group, class, or subclass requests
8 for exclusions shall be ineffective and disregarded by the Settlement Administrator.

9 7.2 The Settlement Administrator shall promptly log each request for exclusion that it
10 receives and provide copies of the log and all such requests for exclusion to Class Counsel and counsel
11 for Defendant, as requested.

12 7.3 The Settlement Administrator shall prepare a list of all persons who timely and properly
13 requested exclusion from the Settlement Class (the Opt-Out List) and shall, before the Final Approval
14 Hearing, submit an affidavit to the Court attesting to the accuracy of the list.

15 7.4 All Settlement Class Members who are not included in the Opt-Out List approved by
16 the Court shall be bound by this Agreement, and will release the Settlement Class Members' Released
17 Claims, even if they never received actual notice of the Action or this proposed Settlement.

18 7.5 The Settlement Administrator, in its sole discretion, shall determine whether a request
19 for exclusion was timely and properly submitted. The Settlement Administrator's decision shall be
20 final, binding, and nonappealable.

21 7.6 Plaintiffs agree not to request exclusion from the Settlement Class.

22 7.7 Settlement Class Members may object to or opt out of the Settlement, but may not do
23 both. Any Settlement Class Member who submits a timely and proper request for exclusion may not
24 file an objection to the Settlement or receive an Individual Settlement Payment, and shall be deemed
25 to have waived any rights or benefits under the Settlement Agreement. If a Settlement Class Member
26 files both an objection and a valid and timely request for exclusion, the request for exclusion will
27 override the objection, and the objection shall therefore be ignored.
28

1 7.8 Notwithstanding the submission of a timely request for exclusion, Class Members will
2 still be bound by the settlement and release of the PAGA Claims or remedies under the Final Judgment
3 pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Requests for exclusion do not apply to
4 the PAGA Claims, and will not be effective to preclude the release of the PAGA Claims.

5 **VIII. PROCEDURES FOR OBJECTIONS**

6 8.1 Any Settlement Class Member that wishes to object to the fairness, reasonableness, or
7 adequacy of this Agreement or the proposed Settlement must (1) provide to the Settlement
8 Administrator (who shall forward it to Class Counsel and counsel for Defendant), a timely statement
9 of the objection, as set forth below, or (2) appear in person at the Final Approval Hearing to make an
10 objection.

11 8.2 To be timely, a written objection must be mailed to the Settlement Administrator, and
12 postmarked no later than the Exclusion/Written Objection Deadline. The date of the postmark on the
13 return-mailing envelope shall be the exclusive means used to determine whether objection has been
14 timely submitted.

15 8.3 A written objection must contain at least the following: (i) the objector's full name,
16 address, telephone, and signature; (ii) a clear reference to the Action; (iii) a statement of the specific
17 legal and factual basis for each objection argument; and (iv) a statement whether the objecting person
18 or entity intends to appear at the Final Approval Hearing, either in person or through counsel and, if
19 through counsel, a statement identifying that counsel by name, bar number, address, and telephone
20 number. All objections shall be signed by the objecting Settlement Class Member, even if the
21 Settlement Class Member is represented by counsel.

22 8.4 The right to object to the proposed Settlement must be exercised individually by a
23 Settlement Class Member. Attempted collective, group, class, or subclass objections shall be
24 ineffective and disregarded.

25 8.5 Any Settlement Class Member who does not file a timely written objection in
26 accordance with this Section shall maintain the right to voice any objections at the Final Approval
27 Hearing. Any Settlement Class Member who does not file a timely written objection in accordance
28 with this Section, nor objects at the Final Approval Hearing shall be forever barred from making any

1 objection to the proposed Settlement, the Plan of Allocation, the Class Counsel Award and the Service
2 Award. Settlement Class Members who object to the proposed Settlement shall remain Settlement
3 Class Members, and shall be deemed to have voluntarily waived their right to pursue an independent
4 remedy against Defendant and the Released Parties.

5 8.6 To the extent any Settlement Class Member objects to the proposed Settlement, and
6 such objection is overruled in whole or in part, such Settlement Class Member will be forever bound
7 by the Final Approval order and Judgment.

8 8.7 It shall be Class Counsel's sole responsibility to respond to any objections made with
9 respect to any application for the Class Counsel Award and Service Award.

10 **IX. RELEASES**

11 9.1 The Released Claims against each and all of the Released Parties shall be released
12 (without an award of costs to any party other than as provided in this Agreement) upon entry of the
13 Final Approval order and Judgment.

14 9.2 As of the Final Approval Date, Plaintiffs, and all Settlement Class Members who have
15 not been excluded from the Settlement Class as provided in the Opt-Out List, individually and on
16 behalf of their Legally Authorized Representatives, heirs, estates, trustees, executors, administrators,
17 representatives, agents, successors, and assigns, and anyone claiming through them or acting or
18 purporting to act on their behalf, agree to forever release, discharge, hold harmless, and covenant not
19 to sue each and all of the Released Parties from each and all of the Named Plaintiffs' General Released
20 Claims (in the case of the Plaintiffs) and the Settlement Class Members' Released Claims (in the case
21 of the Settlement Class Members who have not been excluded from the Settlement Class as provided
22 in the Opt-Out List), and by operation of the Final Judgment shall have fully and finally released,
23 relinquished, and discharged all such claims against each and all of the Released Parties; and they
24 further agree that they shall not now or hereafter initiate, maintain, or assert any Named Plaintiffs'
25 General Released Claims (in the case of Plaintiffs) and any Settlement Class Members' Released
26 Claims (in the case of the Settlement Class Members who have not been excluded from the Settlement
27 Class as provided in the Opt-Out List), against the Released Parties in any other court action or before
28 any administrative body, tribunal, arbitration panel, or other adjudicating body. Without in any way

1 limiting the scope of the releases described in Paragraphs 2.15, 2.25, and 2.32, as well as the remainder
2 of this Section, this release covers, without limitation, any and all claims for attorneys' fees, costs or
3 disbursements incurred by Class Counsel or any other counsel representing Plaintiffs or Settlement
4 Class Members, or by Plaintiffs or Settlement Class Members, or any of them, in connection with or
5 related in any manner to the Action, the Settlement of the Action, the administration of such
6 Settlement, and/or the Released Claims, except to the extent otherwise specified in the Agreement.

7 9.3 As of the Final Approval Date, Plaintiffs and all Settlement Class Members who have
8 not been excluded from the Settlement Class as provided in the Opt-Out List shall be permanently
9 barred and enjoined from initiating, asserting, or prosecuting against the Released Parties in any
10 federal or state court or tribunal any and all Named Plaintiffs' General Released Claims (in the case
11 of Plaintiffs) and any Settlement Class Members' Released Claims (in the case of the Settlement Class
12 Members who have not been excluded from the Settlement Class as provided in the Opt-Out List),
13 arising during the Settlement Class Period, as further provided in Paragraphs 2.15, 2.25, and 2.32, as
14 well as this Section.

15 9.4 Plaintiffs expressly acknowledge that they are familiar with principles of law such as
16 Section 1542 of the California Civil Code, which provides:

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

23 9.5 With respect to the Named Plaintiffs' General Released Claims, as described in
24 Paragraph 2.15, Plaintiffs shall be deemed to have expressly, knowingly, and voluntarily waived and
25 relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits they may
26 otherwise have had pursuant to Section 1542 of the California Civil Code and all similar federal or
27 state laws, rights, rules, or legal principles of any other jurisdiction that may be applicable herein. In
28 connection with the release, Plaintiffs acknowledge that they are aware that they may hereafter
discover claims presently unknown and unsuspected or facts in addition to or different from those
which they now know or believe to be true with respect to matters released herein. Nevertheless,

1 Plaintiffs acknowledge that a portion of the consideration received herein is for a release with respect
2 to unknown damages and complaints, whether resulting from known injuries and consequences or
3 from unknown injuries or unknown consequences of known or unknown injuries, and state that it is
4 the intention of Plaintiffs in agreeing to this release to fully, finally, and forever to settle and release
5 all matters and all claims that exist, hereafter may exist, or might have existed (whether or not
6 previously or currently asserted in any action), constituting Named Plaintiffs' General Released
7 Claims.

8 9.6 Plaintiffs further acknowledge, agree, and understand that: (i) each has read and
9 understands the terms of this Agreement; (ii) each has been advised in writing to consult with an
10 attorney before executing this Agreement; and (iii) each has obtained and considered such legal
11 counsel as they deem necessary.

12 9.7 Subject to Court approval, the Plaintiffs, and all Settlement Class Members to the extent
13 they have not been excluded from the Settlement Class as provided in the Opt-Out List, shall be bound
14 by this Settlement Agreement, and all of their claims shall be released, even if they never received
15 actual notice of the Action or this Settlement.

16 **X. ADMINISTRATION OF THE SETTLEMENT FUND**

17 10.1 The Settlement Administrator or its authorized agents in consultation with the Parties
18 and subject to the supervision, direction, and approval of the Court, shall calculate the allocation of
19 and oversee the distribution of the Total Settlement Amount.

20 10.2 The Total Settlement Amount shall be applied as follows:

21 10.2.1 To pay the total costs, expenses, and fees of the Settlement Administrator
22 incurred in connection with providing Class Notice to potential Settlement Class Members, and the
23 management and distribution of the Total Settlement Amount to Settlement Class Members, not to
24 exceed \$40,000;

25 10.2.2 Subject to the approval and further order(s) of the Court, to pay Plaintiffs'
26 Service Awards based on contributions and time expended assisting in the litigation, up to a maximum
27 of \$15,000 each for Thomas Lewis, Aurelio Sanchez, and Eliseo Leal;
28

1 10.2.3 Subject to the approval and further order(s) of the Court, to pay the Class
2 Counsel Award (up to, but not to exceed, 40% of the Total Settlement Amount (\$10,500,000) and
3 reimbursement of litigation costs not to exceed \$225,000 as ordered by the Court;

4 10.2.4 Subject to the approval and further order(s) of the Court, to distribute 75% of
5 the PAGA Payment to the LWDA and 25% of the PAGA Payment to the Settlement Class Members
6 as part of each Settlement Class Members' Individual Settlement Payment(s), with the amount to be
7 distributed to each Settlement Class Member determined proportionately to their Individual Settlement
8 Payment(s);

9 10.2.5 After the Effective Date and subject to the approval and further order(s) of the
10 Court, to distribute the Individual Settlement Payments from the Total Settlement Amount for the
11 benefit of the Settlement Class pursuant to Settlement Agreement, or as otherwise ordered by the
12 Court.

13 10.3 Within sixty (60) days of the Effective Date, the Class Counsel Award (Four Million
14 Two Hundred Thousand Dollars (\$4,200,000)), the entirety of Class Counsel's litigation costs as
15 approved by the Court, and the Service Awards approved by the Court (up to Fifteen Thousand Dollars
16 (\$15,000) each for Thomas Lewis, Aurelio Sanchez, and Eliseo Leal), and the Settlement
17 Administrator Expenses (up to \$40,000), shall be made by the Settlement Administrator from the
18 amount provided to it by Defendant.

19 10.4 The Settlement Administrator shall use reasonable efforts to disburse the Individual
20 Settlement Payments to Settlement Class Members who did not timely opt out, pursuant to the Plan of
21 Allocation.

22 10.5 If any portion of the Total Settlement Amount is not successfully distributed to
23 Settlement Class Members (*i.e.* checks are not cashed or checks are returned as undeliverable), then
24 after the Void Date, the Settlement Administrator shall void the check and shall direct such unclaimed
25 funds pursuant to governing California law to the State of California Unclaimed Property Fund, to be
26 held there in the name of and for the benefit of such class members under California's escheatment
27 laws.

1 10.6 Settlement Class Members who are not on the Opt-Out List approved by the Court shall
2 be subject to and bound by the provisions of the Settlement Agreement, the releases contained herein,
3 and the Judgment with respect to all Settlement Class Members' Released Claims.

4 10.7 Payment from the Total Settlement Amount made pursuant to and in the manner set
5 forth herein shall be deemed conclusive of compliance with this Settlement Agreement as to all
6 Settlement Class Members.

7 10.8 No Settlement Class Member shall have any claim against the Plaintiffs, Class Counsel,
8 or the Settlement Administrator based on distributions made substantially in accordance with this
9 Settlement Agreement and/or orders of the Court. No Settlement Class Member shall have any claim
10 against any Released Party or its counsel relating to distributions made under this Settlement.

11 **XI. EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION OF**
12 **SETTLEMENT AGREEMENT**

13 11.1 If the Court does not approve the Settlement as set forth in this Settlement Agreement,
14 or does not enter the Final Approval order and Judgment on the terms described herein, or if the Court
15 enters the Judgment and appellate review is sought, and on such review, the entry of Judgment is
16 vacated, modified in any way, or reversed, or if the Final Approval order does not otherwise become
17 Final, then this Settlement Agreement shall be cancelled and terminated, unless all Parties, in their
18 sole discretion no later than thirty (30) days from the date such ruling becomes Final, provide written
19 notice to all other Parties hereto of their intent to proceed with the Settlement under the terms of the
20 Judgment as it may be modified by the Court or any appellate court.

21 11.2 No later than ten (10) business days after the Exclusion/Written Objection Deadline,
22 the Settlement Administrator shall provide to counsel for Defendant the Opt-Out List together with
23 copies of the opt-out requests. Notwithstanding any other provision of this Settlement Agreement, if
24 more than seven percent (7%) of Settlement Class Members exercise their right to opt out of the
25 Settlement, Defendant at its sole and absolute discretion may elect to rescind and revoke the entire
26 Settlement Agreement by sending written notice that it revokes the Settlement pursuant to this
27 paragraph to Class Counsel within ten (10) business days following receipt of the Opt-Out List. If
28 Defendant exercises its right of revocation, it will be responsible for all Settlement Administrator

1 Expenses incurred to the date of revocation. In the event that: (i) the Settlement is not approved, is
2 overturned, or is modified by the Court or on appeal, (ii) the Judgment does not become Final, or (iii)
3 this Settlement Agreement is terminated, cancelled, or fails to become effective for any reason, then:
4 (a) the Parties stipulate and agree the Settlement, this Agreement, the Class Information, the Opt-Out
5 List, and all documents exchanged and filed in connection with the Settlement shall be treated as
6 privileged mediation communications under Cal. Evid. Code §§ 1115 *et seq.*; (b) the Settlement shall
7 be without force and effect upon the rights of the Parties hereto, and none of its terms shall be effective
8 or enforceable, with the exception of this paragraph, which shall remain effective and enforceable; (c)
9 the parties shall be deemed to have reverted *nunc pro tunc* to their respective status prior to execution
10 of this Agreement, including with respect to any Court-imposed deadlines; (d) all Orders entered in
11 connection with the Settlement, including the certification of the Settlement Class, shall be vacated
12 without prejudice to any party's position on any issue, in the Action or any other action, and the parties
13 shall be restored to their litigation positions existing on the date of execution of this Agreement; and
14 (e) the parties shall proceed in all respects as if the Settlement Agreement and related documentation
15 and orders had not been executed, and without prejudice in any way from the negotiation or fact of
16 the Settlement or the terms of the Settlement Agreement. The Settlement Agreement, the Settlement,
17 all documents, orders, and evidence relating to the Settlement, the fact of their existence, any of their
18 terms, any press release or other statement or report by the Parties or by others concerning the
19 Settlement Agreement, the Settlement, their existence, or their terms, any negotiations, proceedings,
20 acts performed, or documents executed pursuant to or in furtherance of the Settlement Agreement or
21 the Settlement shall not be admissible in any proceeding, and shall not be offered, received, or
22 construed as evidence of a presumption, concession, or an admission of liability, of the certifiability
23 of a litigation class, or of any misrepresentation or omission in any statement or written document
24 approved or made, or otherwise used by any person for any purpose whatsoever, in any trial of the
25 Action or any other action or proceedings. Plaintiffs, Class Counsel and the Settlement Administrator
26 shall return to counsel for Defendant all copies of Class Information and Opt-Out Lists and shall not
27 use or disclose the Class Information or Opt-Out List for any purpose or in any proceeding.
28

1 11.3 Defendant does not agree or consent to certification of the Settlement Class for any
2 purpose other than to effectuate the Settlement of the Action. Further, Defendant does not agree or
3 consent that the Action could properly be maintained as a PAGA representative action for any purpose
4 other than to effectuate the Settlement of the Action. If this Settlement Agreement is terminated
5 pursuant to its terms, or the Effective Date for any reason does not occur, all Orders certifying the
6 Settlement Class or establishing the Action as a PAGA representative action only for purposes of
7 effecting this Settlement Agreement, and all preliminary and/or final findings regarding the Settlement
8 Class certification order, shall be automatically vacated upon notice to the Court, the Action shall
9 proceed as to the original class certified on January 18, 2019, and the Action shall revert nunc pro tunc
10 to the procedural status quo as of the date and time immediately before the execution of the Settlement
11 Agreement, in accordance with this Settlement Agreement.

12 **XII. ADDITIONAL PROVISIONS**

13 12.1 All of the Exhibits to this Agreement are an integral part of the Settlement and are
14 incorporated by reference as though fully set forth herein.

15 12.2 “Plaintiffs and Class Counsel acknowledge that an adequate factual record has been
16 established that supports the Settlement, and for settlement purposes only, hereby waive their right to
17 conduct further discovery except as ordered by the Court.

18 12.3 Unless otherwise noted, all references to “days” in this Agreement shall be to calendar
19 days. In the event any date or deadline set forth in this Agreement falls on a weekend or California
20 court legal holiday, such date or deadline shall be on the first business day thereafter.

21 12.4 This Agreement constitutes the full and complete agreement of the Parties hereto, and
22 supersedes all prior negotiations and agreements, whether oral, written or otherwise, and may be
23 amended or modified only by a written instrument signed by counsel for all Parties or the Parties’
24 successors-in-interest.

25 12.5 The Parties reserve the right, subject to the Court’s approval, to make any reasonable
26 extensions of time that might be necessary to carry out any of the provisions of this Agreement. Such
27 extensions must be in writing to be enforceable.

1 12.6 The Settlement Agreement, the Settlement, the fact of the Settlement's existence, any
2 of terms of the Settlement Agreement, any press release or other statement or report by the Parties or
3 by others concerning the Settlement Agreement or the Settlement, and any negotiations, proceedings,
4 acts performed, or documents executed pursuant to or in furtherance of the Settlement Agreement or
5 the Settlement may not be used as evidence of any waiver of, unenforceability of, or as a defense to
6 any OnTrac or SCI arbitration agreement.

7 12.7 The Released Parties shall have the right to file the Settlement Agreement, the Final
8 Approval order and Judgment, and any other documents or evidence relating to the Settlement in any
9 action that may be brought against them in order to support a defense or counterclaim based on
10 principles of res judicata, collateral estoppel, release, good-faith settlement, judgment bar, reduction,
11 or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

12 12.8 The Parties to the Settlement Agreement agree that the Total Settlement Amount and
13 the other terms of the Settlement were negotiated at arm's length and in good faith by the Parties,
14 resulted from an arm's-length mediation session facilitated by Mark Rudy, Esq., and subsequent
15 discussions between the Parties, and reflect a settlement that was reached voluntarily based upon
16 adequate information and sufficient discovery and after consultation with experienced legal counsel.

17 12.9 Plaintiffs and Class Counsel have concluded that the Settlement set forth herein
18 constitutes a fair, reasonable, and adequate resolution of the claims that Plaintiffs asserted against
19 defendant, including the claims on behalf of the Settlement Class, and that it promotes the best interests
20 of the Settlement Class.

21 12.10 To the extent permitted by law, all agreements made and orders entered during the
22 course of the Action relating to the confidentiality of information shall survive this Settlement
23 Agreement.

24 12.11 The waiver by one Party of any breach of this Settlement Agreement by any other Party
25 shall not be deemed a waiver of any other prior or subsequent breach of this Settlement Agreement.

26 12.12 This Settlement Agreement constitutes the entire agreement among the Parties, and no
27 representations, warranties, or inducements have been made to any Party concerning this Settlement
28 Agreement, other than the representations, warranties, and covenants contained and memorialized in

1 this Settlement Agreement. In the event that the Addendum and therefore the Exhibits are never
2 finalized, the Parties will not be relieved in any way of their duties, obligations, and burden under the
3 Settlement Agreement. The Settlement Agreement shall bind the Parties upon execution, regardless
4 of whether the Addendum has also been executed.

5 12.13 This Settlement Agreement may be executed in one or more counterparts. All executed
6 counterparts and copies thereof shall be deemed to be one and the same instrument.

7 12.14 The Parties hereto and their respective counsel agree that they will use their best efforts
8 to obtain all necessary approvals of the Court required by this Settlement Agreement.

9 12.15 This Settlement Agreement shall be binding upon and shall inure to the benefit of the
10 successors and assigns of the Parties hereto, including any and all Released Parties and any
11 corporation, partnership, or other entity into or with which any Released Party hereto may merge,
12 consolidate, or reorganize.

13 12.16 This Settlement Agreement shall not be construed more strictly against one Party than
14 another merely because of the fact that it may have been prepared by counsel for one of the Parties, it
15 being recognized that because of the arm's-length negotiations resulting in the Settlement Agreement,
16 all Parties hereto have contributed substantially and materially to the preparation of the Settlement
17 Agreement.

18 12.17 Except where this Settlement Agreement itself provides otherwise, all terms,
19 conditions, and Exhibits are material and necessary to this Settlement Agreement and have been relied
20 upon by the Parties in entering into this Settlement Agreement.

21 12.18 This Settlement Agreement shall be governed by California law. Any action based on
22 this Settlement Agreement, or to enforce any of its terms, shall be venued in Los Angeles Superior
23 Court, which shall retain jurisdiction over all such disputes. All Parties to this Settlement Agreement
24 shall be subject to the jurisdiction of Los Angeles County Superior Court for all purposes related to
25 this Settlement Agreement. This paragraph relates solely to the law governing this Settlement
26 Agreement and any action based thereon, and nothing in this paragraph shall be construed as an
27 admission or finding that California law applies to the Released Claims of any Plaintiff or Settlement
28 Class Members who reside outside of the state.

1 12.19 The Court shall retain continuing and exclusive jurisdiction over the Parties to this
2 Settlement Agreement for the purpose of the administration and enforcement of this Settlement
3 Agreement.

4 12.20 The headings used in this Settlement Agreement are for the convenience of the reader
5 only, and shall not affect the meaning or interpretation of this Settlement Agreement.

6 12.21 In construing this Settlement Agreement, the use of the singular includes the plural
7 (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

8 12.22 Each Party to this Settlement Agreement warrants that he, she, they, or it is acting upon
9 independent judgment and upon the advice of counsel, and not in reliance upon any warranty or
10 representation, express or implied, of any nature of any kind by any other Party, other than the
11 warranties and representations expressly made in this Settlement Agreement.

12 12.23 Each counsel signing this Settlement Agreement on behalf of their clients who are
13 unable to sign the Agreement on the date that it is executed by other Parties represents that such
14 counsel is fully authorized to sign this Settlement Agreement on behalf of their clients; provided,
15 however, that all Parties who have not executed this Agreement on the date that it is executed by the
16 other Parties shall promptly thereafter execute this Agreement and in any event no later than one (1)
17 week after the Agreement has been executed by counsel.

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23 **[SIGNATURES ON FOLLOWING PAGE]**
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Dated: 2/19/2021, 2021

DocuSigned by:
Thomas Lewis
By: E4111048F043431...
THOMAS LEWIS
PLAINTIFF

Dated: _____, 2021

By: _____
AURELIO SANCHEZ
PLAINTIFF

Dated: _____, 2021

By: _____
ELISEO LEAL
PLAINTIFF

Dated: _____, 2021

By: _____
RICHARD W. CHASE
CHIEF ADMINISTRATIVE OFFICER

FOR EXPRESS MESSENGER
SYSTEMS, INC. DBA ONTRAC
DEFENDANT

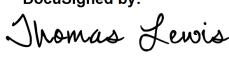
Dated: _____, 2021

By: _____
STANLEY D. SALTZMAN
STEPHEN P. O'DELL
MARLIN & SALTZMAN, LLP
Attorneys for Plaintiff
ELISEO LEAL

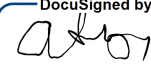
Dated: _____, 2021

By: _____
JAMES R. HAWKINS
GREGORY E. MAURO
JAMES HAWKINS, APLC
Attorneys for Plaintiff
ELISEO LEAL

1 Dated: 2/19/2021, 2021

DocuSigned by:

 By: E4111048F043431...
 THOMAS LEWIS
 PLAINTIFF

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DocuSigned by:

 By: 5071D7B60907449...
 AURELIO SANCHEZ
 PLAINTIFF

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By: _____
 ELISEO LEAL
 PLAINTIFF

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By: _____
 RICHARD W. CHASE
 CHIEF ADMINISTRATIVE OFFICER

 FOR EXPRESS MESSENGER
 SYSTEMS, INC. DBA ONTRAC
 DEFENDANT

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 18 Dated: _____, 2021

By: _____
 STANLEY D. SALTZMAN
 STEPHEN P. O'DELL
 MARLIN & SALTZMAN, LLP
 Attorneys for Plaintiff
 ELISEO LEAL

19
 20
 21
 22 Dated: _____, 2021

By: _____
 JAMES R. HAWKINS
 GREGORY E. MAURO
 JAMES HAWKINS, APLC
 Attorneys for Plaintiff
 ELISEO LEAL

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Dated: 2/19/2021, 2021

DocuSigned by:
Thomas Lewis
By: E4111048F043431...
THOMAS LEWIS
PLAINTIFF

Dated: _____, 2021

By: _____
AURELIO SANCHEZ
PLAINTIFF

Dated: 2-22, 2021

By: Eliseo Leal
ELISEO LEAL
PLAINTIFF

Dated: _____, 2021

By: _____
RICHARD W. CHASE
CHIEF ADMINISTRATIVE OFFICER

FOR EXPRESS MESSENGER
SYSTEMS, INC. DBA ONTRAC
DEFENDANT

Dated: _____, 2021

By: _____
STANLEY D. SALTZMAN
STEPHEN P. O'DELL
MARLIN & SALTZMAN, LLP
Attorneys for Plaintiff
ELISEO LEAL

Dated: February 22, 2021

By: James R. Hawkins
JAMES R. HAWKINS
GREGORY E. MAURO
JAMES HAWKINS, APLC
Attorneys for Plaintiff
ELISEO LEAL

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Dated: _____, 2021

By: _____
THOMAS LEWIS
PLAINTIFF

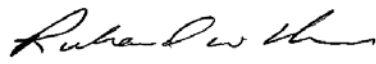
Dated: _____, 2021

By: _____
AURELIO SANCHEZ
PLAINTIFF

Dated: _____, 2021

By: _____
ELISEO LEAL
PLAINTIFF

Dated: February 19, 2021

By:  _____
RICHARD W. CHASE
CHIEF ADMINISTRATIVE OFFICER

FOR EXPRESS MESSENGER
SYSTEMS, INC. DBA ONTRAC
DEFENDANT

Dated: February 22, 2021


By: _____
STANLEY D. SALTZMAN
STEPHEN P. O'DELL
MARLIN & SALTZMAN, LLP
Attorneys for Plaintiff
ELISEO LEAL

Dated: _____, 2021

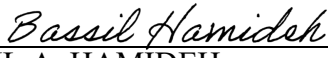
By: _____
JAMES R. HAWKINS
GREGORY E. MAURO
JAMES HAWKINS, APLC
Attorneys for Plaintiff
ELISEO LEAL

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Dated: February 22, 2021

By: 
RAUL PEREZ
MELISSA GRANT
BRANDON BROUILLETTE
CAPSTONE LAW, APC
Attorneys for Plaintiff
THOMAS LEWIS and AURELIO
SANCHEZ

Dated: February 22, 2021

By: 
BASSIL A. HAMIDEH
THE HAMIDEH FIRM, P.C.
Attorneys for Plaintiffs
THOMAS LEWIS and AURELIO
SANCHEZ

4839-6358-2420.3 023721.1192

Exhibit A

Express Messenger Systems Wage and Hour Cases, No. JCCP 4789
SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES
NOTICE OF CLASS ACTION SETTLEMENT

You are not being sued. This notice affects your rights. Please read it carefully.

To: All individuals who personally performed last-mile delivery and pickup services for OnTrac (“Defendant”) in California at any time from February 22, 2009 to [the date of Preliminary Approval], and who were designated as independent contractors (“Class Members”). Excluded this group are individuals designated as Regional Service Providers during the time they were designated as Regional Service Providers.

On _____, the Honorable Kenneth R. Freeman of the Los Angeles County Superior Court granted preliminary approval of this class action settlement and ordered the litigants to notify all Class Members of the settlement. **You have received this notice because Defendant’s records indicate that you are a Class Member, and therefore entitled to a payment from the settlement.** All checks will be negotiable for 180 days—checks that are not cashed within 180 days will be paid to the California State Controller to be deposited in the Unclaimed Property Fund in the Class Members’ name.

Unless you choose to opt out of the settlement by following the procedures described below, you will be deemed a Class Member and, if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement fund. The Final Fairness Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at ____:00 __.m. on _____, 2021 in Department 10 of the Los Angeles County Superior Court located at 312 North Spring Street, Los Angeles, CA 90012. You are not required to attend the hearing, but if you wish to attend, the Court’s preference is that you attend the hearing telephonically (remotely), which can be set up through LA Court Connect (www.lacourt.org/lacc/). A prescheduled appointment is currently necessary to review any documents in the clerk’s office. Please see [www.lacourt.org](http://www.lacourt.org/pdf/recovery_social_distancing_all.pdf) for up-to-date safety measures as they may change, and also see http://www.lacourt.org/pdf/recovery_social_distancing_all.pdf for more information about the Court’s social distancing protocols.

Summary of the Litigation

Plaintiffs Thomas Lewis, Aurelio Sanchez, and Eliseo Leal, on their behalf and on behalf of other current and former service providers, allege that Defendant violated California state labor laws as a result of its alleged failure to classify Class Members as non-exempt employees. After the exchange of relevant information and evidence, the parties agreed to enter into settlement negotiations in an attempt to informally resolve the claims in the case. Following years of negotiations, the parties were able to negotiate a complete settlement of Plaintiffs’ claims.

Counsel for Plaintiffs, and the attorneys appointed by the Court to represent the class, Marlin & Saltzman, LLP; Capstone Law APC; The Hamideh Firm, P.C.; and James Hawkins, APLC (“Class Counsel”), have investigated and researched the facts and circumstances underlying the issues raised in the case and the applicable law. While Class Counsel believe that the claims alleged in this lawsuit have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement. Based on the foregoing, Class Counsel believe the proposed settlement is fair, adequate, reasonable, and in the best interests of Class Members.

Defendant has denied, and continues to deny the factual and legal allegations in the case and believes that it has valid defenses to Plaintiffs’ claims. By agreeing to settle, Defendant is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action. Defendant has agreed to settle the case as part of a compromise with Plaintiffs.

Summary of The Proposed Settlement Terms

Plaintiffs and Defendant have agreed to settle the underlying class claims in exchange for a Class Settlement Amount of \$10,500,000. This amount is inclusive of: (1) individual settlement payments to all Participating Class Members; (2) Class Representative Enhancement Payments of \$15,000, each, to Thomas Lewis, Aurelio Sanchez, and Eliseo Leal for

their services on behalf of the class and for general releases of all claims arising out of their relationship with Defendant; (3) \$4,200,000 in attorneys' fees and up to \$225,000 in litigation costs and expenses; (4) a \$150,000 payment to the California Labor and Workforce Development Agency ("LWDA") in connection and accordance with the Labor Code Private Attorneys General Act of 2004 ("PAGA"), and (5) reasonable Settlement Administrator's fees and expenses currently estimated at \$_. After deducting the Class Representative Enhancement Payments, attorneys' fees and costs, the payment to the LWDA, and the Settlement Administrator's fees and expenses, a total of approximately \$ will be allocated to Class Members who do not opt out of the settlement ("Net Settlement Amount").

Each Class Member's settlement payment will be based on the number of payments each Class Member received during the period from February 22, 2009 to the date of Preliminary Approval ("Class Period"). The formula for calculating settlement payments is as follows:

- (a) Defendant will calculate the total number of periods in which a Class Member received a payment via Subcontracting Concepts, Inc. ("SCI"), based on the records and data maintained by SCI, for each Class Member from the time period between February 22, 2009 and [the date of Preliminary Approval] ("Active Settlement Periods").
- (b) Each Class Member's share of the Net Settlement Amount will be calculated according to the following formula: $\text{Class Member's Active Settlement Periods} \div \text{Entire Class' Active Settlement Periods} \times \text{Net Settlement Amount}$.
- (c) The entire Net Settlement Amount will be disbursed to all Class Members who do not submit timely and valid Requests for Exclusion.

According to Defendant's records, you worked during a total of ____ Active Settlement Periods. Accordingly, your estimated payment is approximately \$ _____. If you believe the information provided above is incorrect, please contact the Settlement Administrator to dispute the calculation. You must attach all documentation in support of your dispute. All disputes should be postmarked or faxed on or before [insert date of Response Deadline] to:

Settlement Administrator

c/o _____

Fax No. _____

If you dispute the information stated above, Defendant's records will control unless you are able to provide documentation that establishes otherwise.

Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement. For purposes of this settlement, the Individual Settlement Payment will be allocated as non-wages for which IRS Forms 1099-MISC will be issued.

Your Options Under the Settlement

Option 1 – Automatically Receive a Payment from the Settlement

If you want to receive your payment from the settlement, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if and when the Settlement receives final approval by the Court.

If you choose **Option 1**, and if the Court grants final approval of the settlement, you will be mailed a check for your share of the settlement funds. In addition, you will be deemed to have released or waived the following claims ("Released Claims"): Any and all present and past claims, actions, demands, causes of action, suits, debts, obligations, damages, rights

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

or liabilities, of any nature and description whatsoever, known or unknown, existing or potential, recognized now or hereafter, expected or unexpected, pursuant to any theory of recovery (including those based in contract or tort, common law or equity, federal, state, or local law, statute, ordinance, or regulation, and for claims for compensatory, consequential, punitive or exemplary damages, statutory damages, penalties, interest, attorneys' fees, costs, or disbursements) based on or reasonably related to the conduct alleged in the Complaint during the Settlement Period, and specifically to claims pursuant to California Labor Code sections 201-204, 206.5, 207, 208, 210-214, 216, 218, 218.5, 218.6, 221, 225.5, 226, 226.2, 226.3, 226.7, 226.8, 227.3, 432, 432.5, 510, 512, 551-553, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 2750.3, 2753, 2800, 2802, 2698 et seq. (PAGA Claims), and 3700 et seq.; Cal. Code of Regulations, tit. 8, § 11090; California Business and Professions Code sections 17200 et seq.; and any other similar California state or federal law, for non-payment of wages, minimum wages, overtime wages (including regular rate calculations), expense reimbursement, wage statements, failure to provide workers' compensation insurance, meal periods, rest breaks, final pay, waiting time penalties, PAGA penalties, restitution, interest, costs and expenses, attorneys' fees, declaratory relief, injunctive relief, liquidated damages, exemplary or punitive damages, civil penalties, equitable remedies, and/or pre- or post-judgment interest. "Settlement Class Members' Released Claims" do not include claims that, as a matter of law cannot be released. The "Settlement Class Members' Released Claims" are released from February 22, 2009 through [preliminary approval of this Settlement].

Option 2 – Opt Out of the Settlement

If you do not wish to participate in the settlement, you may exclude yourself from participating by submitting a written request to the Settlement Administrator expressly and clearly indicating that you have received this Notice of Class Action Settlement, decided not to participate in the settlement, and desire to be excluded from the settlement. The written request for exclusion must include your name, signature (even if you have counsel), address, and telephone number. Sign, date, and mail the request for exclusion by First Class U.S. Mail or equivalent, to the address below.

Settlement Administrator

c/o _____

The written request to be excluded must be postmarked not later than _____, 2021. If you submit a request for exclusion which is not postmarked by _____, 2021, your request for exclusion will be rejected, and you will be included in the settlement class.

If you choose **Option 2**, you will no longer be a Class Member, and you will (1) be barred from participating in the settlement, but you will not give up any legal rights, (2) be barred from filing an objection to the settlement, and (3) not receive a payment from the settlement.

Option 3 – Object to the Settlement

If you decide to object to the settlement because you find it unfair or unreasonable, you may submit a written objection stating why you object to the settlement, or you may instead appear at the Final Fairness Hearing to object to the Settlement.

Written objections must provide: (1) your full name, signature (even if you have counsel), address, and telephone number, (2) a written statement of all grounds for the objection accompanied by any legal support for such objection; (3) copies of any papers, briefs, or other documents upon which the objection is based; and (4) a statement about whether you intend to appear at the Fairness Hearing. The objection must be mailed to the administrator at [administrator's address].

All written objections must be received by the administrator by not later than _____ 2021. By submitting an objection, you are not excluding yourself from the settlement. To exclude yourself from the settlement, you must follow the directions described above. Please note that you cannot both object to the settlement and exclude yourself. You must choose one option only.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

You may also, if you wish, appear at the Final Fairness Hearing set for _____ at _____ a.m./p.m. in the Superior Court of the State of California, for the County of Los Angeles and discuss your objection with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the hearing.

If you choose **Option 3**, you will still be entitled to the money from the settlement. If the Court overrules your objection, you will be deemed to have released the Released Claims.

Additional Information

This Notice of Class Action Settlement is only a summary of the case and the settlement. For a more detailed statement of the matters involved in the case and the settlement, you may refer to the pleadings, the settlement agreement, and other papers filed in the case. All inquiries by Class Members regarding this Class Notice and/or the settlement should be directed to the Settlement Administrator or Class Counsel.

Stanley D Saltzman Marlin & Saltzman, LLP 29800 Agoura Road, Suite 210 Agoura Hills, CA 91301 Phone: 1 (818) 991-8080	Raul Perez Capstone Law APC 1875 Century Park E., Suite 1000 Los Angeles, CA 90067 Phone: 1 (855) 588-9779
Bassil A. Hamideh The Hamideh Firm, P.C. 1801 Century Park E., Suite 2400 Los Angeles, CA 90067 Phone: 1 (855) 588-9779	James R. Hawkins James Hawkins, APLC 9880 Research Drive, Suite 200 Irvine, CA 92618 Phone: 1 (949) 387-7200

PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE, DEFENDANT'S ATTORNEYS WITH INQUIRIES.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

Exhibit B

MARLIN & SALTZMAN, LLP
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Class Counsel

[Additional Class Counsel Listed on Next Page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES — CENTRAL CIVIL WEST

Coordination Proceeding Special Title
(Rule 3.550)

**EXPRESS MESSENGER SYSTEMS
WAGE AND HOUR CASES**

Thomas Lewis v. Express Messenger Systems
(BC501521)

Eliseo Leal v. Express Messenger Systems
(BC509904)

Judicial Council Coordination Proceeding
Case No. **JCCP 4789**

Assigned for All Purposes to:
Hon. Kenneth R. Freeman,
Spring Street, Dept. SSC-14

**[PROPOSED] ORDER GRANTING MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: March 23, 2021
Time: 11:00 a.m.
Place: Department SSC-14

1 **Additional Attorneys for Plaintiffs**

2 Bassil A. Hamideh (SBN: 261233)
3 THE HAMIDEH FIRM, P.C.
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5 Los Angeles, California 90067
6 Telephone: (310) 556-9687
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9 Class Counsel

10 James R. Hawkins, Esq.
11 Gregory E. Mauro, Esq.
12 JAMES HAWKINS, APLC
13 9880 Research Drive, Suite 200
14 Irvine, California 92618
15 Tel: (949) 387-7200
16 Fax: (949) 387-6676
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19 Class Counsel

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6. The Court preliminarily approves the Settlement Agreement, including all the terms and conditions set forth therein and the Class Settlement Amount and allocation of payments.

7. The rights of any potential dissenters to the proposed Settlement are adequately protected in that they may exclude themselves from the Settlement and proceed with any alleged claims they may have against Defendant, or they may object to the Settlement and appear before this Court. However, to do so they must follow the procedures outlined in the Settlement Agreement and Notice of Class Action Settlement.

8. The Court approves, as to form and content, the proposed Notice of Class Action Settlement (“Notice Packet”).

9. The Court directs the mailing, by First-Class U.S. mail, of the Notice Packets to Class Members in accordance with the schedule set forth below and the other procedures described in the Settlement Agreement. The Court finds that the method selected for communicating the preliminary approval of the Settlement Agreement to Class Members is the best notice practicable under the circumstances, constitutes due and sufficient notice to all persons entitled to notice, and thereby satisfies due process.

10. The Court appoints Plaintiffs Thomas Lewis, Aurelio Sanchez, and Eliseo Leal as the representatives for the Settlement Class conditionally certified by this Order.

11. The Court appoints Marlin & Saltzman, LLP; Capstone Law APC; The Hamideh Firm, P.C.; and James Hawkins, APLC as Class Counsel. The Court finds that counsel have demonstrable experience litigating, certifying, and settling class actions, and will serve as adequate counsel for the Class conditionally certified by this Order.

12. The Court approves and appoints CPT Group, Inc. as the Settlement Administrator.

13. The following dates shall govern for purposes of this Settlement:

Date	Event
April 7, 2021 (or not later than 15 business days after the Court grants preliminary approval of the Settlement Agreement, if later)	Last day for Defendant to produce the Class Information to the Settlement Administrator.
May 24, 2021 (or not later than 60 calendar days after the Court grants preliminary approval of the Settlement Agreement, if later)	Last day for the Settlement Administrator to mail Notice Packets to all Class Members.

Date	Event
July 8, 2021 (or not later than 45 calendar days after the Settlement Administrator mails the Notice Packets, if later)	Last day for Class Members to submit Requests for Exclusion or Objections to the Settlement.
July 23, 2021	Last day for Plaintiffs to file the Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees, Costs, and Class Representative Service Awards.
August 17, 2021 at 11:00 a.m.	Hearing on Motion for Final Approval of Class Action Settlement and Motion for Attorneys' Fees, Costs, and Class Representative Service Awards.

14. The Court expressly reserves the right to continue or adjourn the final approval hearing without further notice to the Class Members.

IT IS SO ORDERED.

Dated: _____

Hon. Kenneth R. Freeman
Los Angeles Superior Court Judge