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Attorneys for Plaintiff ARNOLD GARCIA,
on behalf of himself, all others similarly
situated, and on behalf of the general public

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

ARNOLD GARCIA, on behalf of himself, all
others similarly situated, and on behalf of the
general public,

Plaintiff,

v.

MCCOLLISTER'S TRANSPORTATION
SYSTEMS, INC.; MCCOLLISTER'S
GLOBAL SERVICES, INC.;
MCCOLLISTER'S AUTO TRANSPORT,
LLC; and DOES 1-100,

Defendants.

Case No. RG21112345

[Consolidated with Case No. RG21112189]

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

Date: April 11, 2023

Time: 9:15 a.m.

Reservation ID: 439395595321

1 I, DAVID MARA, declare as follows:

- 2 1. I am President of Mara Law Firm, PC and counsel of record for Plaintiff and the putative class in
3 this matter. I am duly admitted to practice before all the courts of the state of California. The
4 following facts are within my personal knowledge and, if called to testify, I could and would
5 competently testify thereto.
- 6 2. I have been practicing law in California since 2004.
- 7 3. I extensively handle employment cases which involve violations of the California Labor Code
8 and Industrial Welfare Commission Wage Orders, such as wage and hour class actions and cases
9 alleging violations of the Private Attorneys General Act of 2004 ("PAGA").
- 10 4. I was co-class counsel in *Hohnbaum v. Brinker Restaurant Corp.*, San Diego Superior Court
11 Case No. GIC834348, which was the underlying case in the California Supreme Court's
12 landmark decision in *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, in
13 which the California Supreme Court delineated the scope of employer obligations to provide, and
14 employee rights to receive, meal and rest periods under California law.
- 15 5. I wrote an Amicus brief on behalf of Consumer Attorneys Of California ("CAOC") in the recent
16 decision by the California Supreme Court in *Augustus v. ABM Security Services, Inc.* (2016) 2
17 Cal.5th 257 (rest breaks must be duty-free and time spent being on call during rest breaks is not
18 considered duty-free).
- 19 6. My firm also wrote an Amicus brief on behalf of CAOC in the recent decision by the California
20 Supreme Court in *Williams v. Superior Court* (2017) 3 Cal. 5th 531 (PAGA and wage and hour
21 class action).
- 22 7. My firm has been granted class certification in both state and federal courts.
- 23 8. I am also Plaintiff's counsel in a host of other class actions involving violations of
24 California's wage and hour laws, many of which involve the transportation industry. For
25 example, I have been and am involved as counsel for plaintiffs in the following class actions
26 involving wage and hour violations under California law: *Davis v. Apria Healthcare Group*
27 (Case No. 37-2015-00007743); *Norona v. B&G Delivery System, Inc.* (Case No. 34-2015-
28 00186826-CU-OE-GDS); *Perez v. City of San Diego* (Case No. 37-2014-00016621); *Cuellar-*
Ramirez v. US Foods, Inc. (Case No. RG15770766); *Peron v. The Vons Companies, Inc.*
(Case No. 37-2014-00006965); *Hilderbrand v. LinkUs Enterprises, LLC* (Case No.

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

9. Defendants are in the business of transporting freight for their customers. In order to accomplish this, Defendants contract with drivers who enter into independent contractor operating agreements with Defendants (“owner operators”) to provide the trucks and equipment to facilitate transport. Plaintiff Arnold Garcia contracted with Defendants as an owner operator.

10. On July 1, 2021, in compliance with Labor Code § 2699.3(a)(1), Plaintiff submitted written notice via online filing to the LWDA, setting forth the facts and theories of the violations alleged against Defendants, claiming that he and others were misclassified by Defendants as independent contractors. Plaintiff then filed a PAGA action against Defendants on September 9, 2021, in Alameda Superior Court, Case No. RG21112189, entitled *Arnold Garcia v. McCollister’s Transportation Systems, Inc., et al.* He alleged causes of action on behalf of himself and other owner operators seeking civil penalties under PAGA for: (1) Failure to Pay for All Time Worked; (2) Failure to Provide Meal Periods; (3) Failure to Authorize and Permit Rest Periods; (4) Failure to Pay All Wages Due at Termination; (5) Failure to Provide Itemized Wage Statements; (6) Failure to Pay All Wages Owed Twice Per Month; (7) Failure to Reimburse Business Expenses; and (8) Willful Misclassification.

11. Plaintiff also filed a class action against Defendants on September 10, 2021, in Alameda Superior Court, Case No. RG21112345, entitled *Arnold Garcia v. McCollister’s Transportation Systems, Inc., et al.* Claiming that he and others were misclassified by Defendants as independent contractors, he alleged causes of action on behalf of himself and other owner operators for: (1) Failure to Pay for All Time Worked; (2) Failure to Provide

1 Meal Periods; (3) Failure to Authorize and Permit Rest Periods; (4) Failure to Provide
2 Itemized Wage Statements; (5) Failure to Pay All Wages Due at Termination; (6) Failure to
3 Reimburse Business Expenses; and (7) Violation of Unfair Competition Law.

4 12. Defendants deny the allegations of the actions in their entirety, deny any liability or
5 wrongdoing of any kind associated with the claims alleged in the actions, and further deny
6 that, for any purpose other than settling this action, this matter is appropriate for class
7 treatment. Defendants further contend that they have complied with all applicable California
8 laws, the California Labor Code, the applicable California Wage Order(s), and the Unfair
9 Competition Law. Defendants finally contend that, if this matter were to be litigated further,
10 they would have strong defenses to oppose class certification and succeed on the merits of
11 Plaintiff's causes of action.

12 13. Through discovery, Plaintiff sought numerous documents and substantial amounts of data that
13 were needed to evaluate the case. These documents included the contracts entered into
14 between Defendants and owner operators, records reflecting freight hauled by Class Members
15 for Defendant during the Class Period, as well as what they were paid for delivering the
16 freight, including any deductions taken from payment by Defendants, policies and practices in
17 place during the class period, detailing requirements and expectations for Class Members
18 when delivering freight for Defendants' customers, as well as data surrounding the number of
19 current and former employees.

20 14. This discovery, in conjunction with the Parties' meet and confer efforts, resulted in the
21 production of numerous documents and thousands of lines of data. Using the records
22 reflecting the freight hauled by Class Members and the data surrounding the number of
23 current and former Class Members, Plaintiff was able to extract numerous data points used in
24 establishing a potential exposure model in preparation for mediation.

25 15. Plaintiff contends that Defendants can terminate Class Members with or without cause, which
26 is "the strongest evidence of the right to control..." *Ayala v. Antelope Valley Newspapers, Inc.*
27 (2014) 59 Cal.4th 522, 531. For example, under the Independent Contractor Operating
28 Agreement ("ICOA"), the owner operators are subject to disqualification if Defendants deem

1 them to be “unsafe” under Defendants’ safety policies. Defendants, in their sole discretion,
2 obtain the customers and enter into agreements to deliver their freight, negotiate and set the
3 rates the customers are to pay, and assign and dispatch the Class Members directly to
4 transport the freight. Owner operators are also forbidden from subcontracting with anyone
5 else to perform its deliveries, denying owner operators the opportunity to independently
6 manage their “businesses.”

7 16. Furthermore, Defendants exert control over many other aspects of the owner operator’s job
8 performance. Defendants require owner operators to maintain certain wireless cell phone
9 plans that contains certain specifications mandated by Defendants. Owner operators must
10 paint their trailers white and place Defendants’ identifying information to their trailers, as well
11 as wear Defendants’ uniforms. Additionally, owner operators are required by Defendants to
12 follow any and all instructions they receive from Defendants’ (not the owner operators’)
13 customers and must submit their trucks and equipment for inspection with Defendants
14 whenever Defendants so choose, with any costs associated with these inspections to be borne
15 by the owner operators.

16 17. Defendants contend that Plaintiff and putative class members are not their employees, and that
17 they do not control Class Members’ hiring, firing, schedules, and/or pay. Defendants argue
18 that Class Members have independence in how to perform their jobs. Defendants contend that
19 they do not control what Class Members do or how they perform their jobs. Defendants argue
20 that they cannot simply unilaterally decide to “terminate” Class Members at will. Defendants
21 claim they can merely terminate the agreement entered into with owner operators through the
22 very terms of the agreement itself, severely limiting their ability to “terminate” owner
23 operators at will.

24 18. Additionally, Defendants state that the various “controls” exerted on Class Members and
25 “requirements” for how Class Members are to deliver freight are set forth either by the
26 customers or pursuant to various federal laws and regulations, and not from Defendants. As
27 such, these things cannot be considered as actions undertaken and/or controls asserted by the
28 Defendants, and as a result, Plaintiff would fail to satisfy any of the factors required under the

1 *Borello* test.

2 19. While Plaintiff believes in the strength of his arguments, he also recognizes the risk that the
3 Court may determine Plaintiff and the putative class were not employees of Defendants. **If the**
4 **Court ruled in favor of Defendants on this issue, all of Plaintiff's claims below would be**
5 **extinguished, as they are all dependent upon the Court agreeing that Defendants are**
6 **Plaintiff's and Class Members' employer under California law.**

7 20. Defendants require owner operators to shoulder the costs of insuring their trucks, fueling their
8 trucks, amongst various other costs. Here, Plaintiffs allege the Direct Contractors are
9 misclassified as independent contractors when, under California law, they should be classified
10 as employees. Just as Defendants could not charge their own employee drivers the cost of
11 fuel, insurance, and taxes in the furtherance of Defendants' business, it cannot do so to the
12 owner operators, as they, too, are Defendants' employees under California law.

13 21. Defendants argue that because owner operators are not employees and properly classified as
14 independent contractors, they do not need to reimburse them for business expenses.
15 Defendants argue that California Labor Code § 2802 only obligates an employer to indemnify
16 its employee for expenses that the employee incurred while performing his or her job duties.
17 As Defendants claim they are lawfully contracting with the owner operators to facilitate the
18 delivery of the customer's freight, these expenses are properly borne by the owner operators
19 pursuant to the terms of the agreements.

20 22. Defendants have no evidence they provided Class Members with meal or rest periods. They
21 have no meal or rest period policies they communicate to Class Members. They also have no
22 records of meal or rest periods. Thus, it will be fairly simple to show Defendants failed to
23 provide meal and rest periods to Class Members, who will be owed a 226.7 premium on every
24 qualifying shift.

25 23. Defendants again argue that because Class Members are not employees and, instead, are
26 properly classified as independent contractors, they are under no obligation to provide Class
27 Members with meal or rest periods, as California law only requires an "employer" to provide
28 them to its "employees." Defendants claim they are lawfully engaging with and utilizing Class

Members to facilitate the delivery of the through the use of the agreements they enter into with the owner operators, and that the agreements clearly state that all of that any Class Member performing work under the terms of the agreements are independent contractors, not employees.

24. Defendants also point out that the Federal Motor Carrier Safety Administration's (FMCSA) December 21, 2018, determination wherein the FMCSA found that California's meal and rest break laws are preempted as applied to drivers of property-carrying commercial motor vehicles who are subject to the FMCSA's own break regulations would similarly extinguish all of Plaintiff's meal and rest period claims. On January 15, 2021, the Ninth Circuit upheld the FMCSA's determination that federal law preempted California's meal and rest break rules. *See Int'l Bhd. of Teamsters, Local 2785 v. Fed. Motor Carrier Safety Admin.* (2021) 986 F.3d 841. As such, Defendants argues that FMCSA's December 21, 2018, determination provides affirmative preemption defenses to Plaintiff's claims for meal and rest break violations.

25. Plaintiff counters that the FMCSA's determination does not apply retroactively. In *Garcia v. Superior Court* (2022) 80 Cal.App.5th 63, the Court of Appeal found the very language of the preemption decision suggested prospective application only and did not bar claims arising from conduct prior to the decision. In its ruling, the Court of Appeal held that "although the FMCSA had the authority to provide that '[a] State *may not enforce*' its own laws (§ 31141(a)), the Preemption Decision elected to use more limited language, by providing that 'California *may no longer enforce* the [meal and rest break rules] with respect to drivers of property-carrying [commercial motor vehicles] subject to FMCSA's [hours of service] rules.'" *Garcia v. Superior Court* (2022) 80 Cal.App.5th 63, 69 (citing Preemption Decision, 83 FR 67470, 67480) (italics added). "We presume the FMCSA was aware of the statute's language and intentionally chose different language." *Id.* "That language—'may no longer enforce'—'strongly suggests prospective, not retroactive, application.'" *Id.* (citing *North v. Superior Hauling & Fast Transit, Inc.* (C.D.Cal. May 31, 2019, No. EDCV 18-2564 JGB (KKx)) 2019 U.S.Dist.LEXIS 217010 at *9).

26. Owner operators are paid by the load, they are not paid for time when "the wheels are not

moving,” but they are not stopped for a delivery, such as fueling up, sitting in traffic, for breakdowns, etc. A piece-rate pay formula that does not “compensate for all time worked does not comply with the California Labor Code, even if, averaged out, it would pay at least minimum wage for all hours worked.” *Cardenas v. McLane Foodservices, Inc.* (C.D. Cal. 2011) 796 F.Supp.2d 1246, 1252; See also, *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 49; *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 320; *Reinhardt v. Gemini Motor Transport* (E.D. Cal.2012) 869 F.Supp.2d 1158, 1168.

27. Defendants contend that as Class Members are properly classified as independent contractors under California law, none of the authorities relied upon by Plaintiff renders Defendants liable for any unpaid wages whatsoever. Defendants claim the only monetary compensation they are required to provide to the Class Members at all at any point in time is solely based on the provisions of the agreements it enters into with the owner operators, which compensates them for all the hours and various tasks necessary in furtherance of the freight deliveries.

28. The Parties agreed to attend mediation with respected wage and hour mediator Mark Rudy on August 16, 2022. The matter did not settle at mediation. Mr. Rudy remained in regular contact with the Parties to facilitate negotiations, culminating in Mr. Rudy issuing a mediator’s proposal, which the Parties accepted on November 8, 2022. Since then, the Parties have met and conferred regarding the terms of the settlement and finalized their agreement in the Settlement. The Parties seek preliminary approval of the Settlement in the instant motion.

29. In addition to being able to discover the strengths and vulnerabilities associated with Plaintiff’s claims, Defendants provided Plaintiff with information and data points which Plaintiff used to establish a representative damage model.

30. Plaintiff alleges that as a result of Defendants’ misclassification of Class Members, owner operators are forced to shoulder the costs of fuel, insurance, taxes, and other surcharges in the furtherance of Defendants’ business, costs which Defendants would not be permitted to pass off to employees under California law. If Plaintiff were to prevail on this theory of liability, owner operators would be entitled to the reimbursement of these costs. At the time of mediation, Plaintiff was able to estimate that owner operators had approximately \$3,552,198

1 in total deducted from their pay to cover costs such as insurance, permits, and other necessary
2 items. Therefore, the *maximum potential exposure* under this theory of liability would be
3 **\$3,552,198.**

4 31. Defendants argue that because owner operators are not employees and properly classified as
5 independent contractors, it does not need to reimburse them for business expenses.
6 Defendants argue that California Labor Code § 2802 only obligates an employer to indemnify
7 its employee for expenses that the employee incurred while performing his or her job duties.
8 As Defendants claim it is lawfully contracting with the owner operators to facilitate the
9 delivery of the customer's freight, these expenses are properly borne by the owner operators
10 pursuant to the terms of the agreements.

11 32. Furthermore, Defendants points out that Plaintiff would be unable to obtain class certification
12 on this claim, claiming that Plaintiff and Class Members would be unable to present adequate
13 records of these supposed costs and how they were necessary to performing their job duties,
14 calling into question the issue of liability, as Plaintiff and Class Members would be unable to
15 establish that they actually suffered any harm on a classwide basis. Should litigation continue,
16 Plaintiff's risk the Court siding with Defendants' view, which would extinguish any potential
17 recovery on this cause of action.

18 33. Plaintiff contends that because Defendants misclassifies Plaintiff and Class Members as
19 independent contractors, they are not provided with meal or rest periods, as independent
20 contractors are not entitled to the protections California law provides for employees. If
21 Plaintiff was to prevail on this theory of liability, Class Members would be entitled to a meal
22 and rest period premium for each shift worked. Therefore, the *maximum potential exposure*
23 under this theory of liability would be **\$161,874** (2,645 shifts x \$30.60 approximate average
24 hourly rate x 2 (1 meal period and 1 rest period premium per shift) = \$161,874).

25 34. Defendants again argue that because Class Members are not employees and properly
26 classified as independent contractors, it is under no obligation to provide Class Members with
27 meal or rest periods, as California law only requires an "employer" to provide them to its
28 "employees." Defendants claims it is lawfully engaging with and utilizing Class Members to

1 facilitate the delivery of the through the use of the agreements it enters into with the owner
2 operators, and that the agreements clearly state that all of that any Class Member performing
3 work under the terms of the agreements are independent contractors, not employees. Should
4 the Court agree with Defendants' arguments, Plaintiff and Class Members would be entitled
5 to no recovery under these causes of action.

6 35. Plaintiff further alleges that Defendants have failed to pay Class Members for all hours
7 worked, as Defendants unlawfully misclassified them as independent contractors as opposed
8 to employees. Owner operators were paid by the load, and therefore were not compensated for
9 any other time spent working. Accordingly, Defendants' *maximum* exposure under Plaintiff's
10 unpaid wages claim is **\$610,837** (9,981 shifts x 2 hours of unpaid time per shift x \$30.60 =
11 \$610,837).

12 36. As explained above, Defendants contends that as Class Members are properly classified as
13 independent contractors under California law, none of the authorities relied upon by Plaintiff
14 renders Defendants liable for any unpaid wages whatsoever. Defendants argue the only
15 monetary compensation it is required to provide to the Class Members at all at any point in
16 time is solely based on the provisions of the agreements it enters into with the owner
17 operators, which compensates them for all the hours and various tasks necessary in
18 furtherance of the freight deliveries. Furthermore, Defendants point out that Plaintiff would be
19 unable to obtain class certification on this claim, claiming that Plaintiff and Class Members
20 would be unable to present adequate records of these supposed unpaid wages not only making
21 damages completely unmanageable, but also calling into question the issue of liability, as
22 Plaintiff and Class Members would be unable to establish that they actually suffered this harm
23 on a classwide basis.

24 37. Plaintiff is also seeking PAGA penalties. PAGA allows the private enforcement of certain
25 California Labor Code sections relating to wage and hour violations. PAGA Section
26 2699(f)(2) provides for a standard penalty amount where a civil penalty is not otherwise
27 specified by statute:
28 [T]he civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay

period for each subsequent violation.

Plaintiff alleges that Defendants have at least three (3) violations – failure to pay all time worked, failure to reimburse business expenses, and willful misclassification – of the Labor Code sections which give rise to PAGA penalties. The statute of limitations for PAGA violations goes back one year. Plaintiff calculated Defendants’ potential maximum exposure under PAGA as follows:

$\$100 \times 2 \text{ PAGA violations} \times 1,162 \text{ pay periods during the one-year statutory period} =$

$\$232,400$

$\$10,000 \times 19 \text{ misclassified owner operators} = \$190,000$

$\$232,400 + \$190,000 = \$422,400$

38. Not taking into account any of their defenses or arguments, Defendants’ total exposure if Plaintiff is successful in his core claims would be approximately \$4,324,909 [\$3,552,198 (reimbursement exposure) + \$161,874 (meal and rest period exposure) + \$610,837 (unpaid wages exposure) = \$4,324,909]. If his underlying core claims are successful, he may also be entitled to PAGA penalties in the amount of \$422,400.

39. In light of the risks Plaintiff’s claims faced, Plaintiff and his Counsel believe that the settlement amount of \$400,000 – **with an average settlement share amount estimated at \$6,638.89** – is a reasonable and fair settlement amount.

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

41. A true and correct copy of the filing receipt from Plaintiffs’ upload of their preliminary approval motion and supporting documents to the LWDA’s website is attached as **Exhibit 2**.

42. A true and correct copy of the confirmation that the upload of Plaintiffs’ preliminary approval motion was received by the LWDA is attached as **Exhibit 3**.

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

Dated: March 17, 2023



David Mara

Exhibit 1

JOINT STIPULATION AND SETTLEMENT AGREEMENT

Subject to final approval by the Court, this settlement agreement is made between Plaintiff Arnold Garcia (hereinafter “Plaintiff”) on behalf of himself and the Class and Defendants McCollister’s Transportation Systems, Inc., McCollister’s Global Services, Inc., and McCollister’s Auto Transport, LLC (hereinafter “Defendants” or “McCollister’s”) (collectively Plaintiff and Defendants are referred to in this Agreement as the “Parties”). This agreement is intended to settle the cases entitled *Arnold Garcia v. McCollister’s Transportation Systems, Inc., et al.* (Alameda County Superior Court, Case No. RG21112345) and *Arnold Garcia v. McCollister’s Transportation Systems, Inc., et al.* (Alameda County Superior Court, Case No. RG21112189) (collectively, “the Complaints” or “Action”).

I. DEFINITIONS

In addition to the other terms defined in this agreement, the terms below have the following meaning:

1. **Administration Costs**: The costs incurred by the Settlement Administrator, Phoenix Class Action Administration Solutions, to administer this Settlement, which shall not exceed \$5,000. All Administration Costs shall be paid from the Gross Settlement Amount. If the actual administration costs are less than the amount allocated in this agreement, or if the Court awards less than the amount requested, the difference in the amount allocated in this agreement and the amount awarded by the Court will become part of the Net Settlement Amount for distribution to Participating Class Members.
2. **Agreement, Settlement Agreement, Joint Stipulation, or Settlement**: The settlement agreement reflected in this document, titled “Joint Stipulation and Settlement Agreement.”
3. **Aggrieved Employees**: All persons who contracted with Defendants as an owner/operator to haul freight, who worked a majority of their time under the contract in California and/or had their base of operations in California, whom Defendants classified as independent contractors, and who drove in California from July 1, 2020 through the date the Court enters an order granting Preliminary Approval, or January 7, 2023 (sixty (60) days after the acceptance of the mediator’s proposal), whichever occurs first.
4. **Attorneys Fee Award**: The amount of attorneys’ fees approved of by the Court and awarded to Class Counsel. This amount shall not exceed 33 1/3% of the Gross Settlement Amount. 33 1/3% of the Gross Settlement Amount is \$133,333.33. The Attorneys Fee Award shall be paid from the Gross Settlement Amount. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.

5. **Class**: All persons who contracted with Defendants as an owner/operator to haul freight, who worked a majority of their time under the contract in California and/or had their base of operations in California, whom Defendants classified as independent contractors, and who drove in California from September 10, 2017, through the date the Court enters an order granting Preliminary Approval, or January 7, 2023 (sixty (60) days after the acceptance of the mediator's proposal), whichever occurs first.
6. **Class Counsel**: David Mara and Matthew Crawford of Mara Law Firm, PC and Hunter Pyle and John J. Darin of Hunter Pyle Law.
7. **Class Data**: The electronic database Defendants shall deliver to the Settlement Administrator which will list the following information for each Class Member: (1) first and last name; (2) last known mailing address; (3) social security number; and (4) the total number of weeks during which the Class Member performed work during the Class Period. The Class Data shall be based on Defendants' payroll, personnel, and other business records.
8. **Class Member**: Each person eligible to participate in this Settlement who is a member of the Class as defined above.
9. **Class Notices**: The Notice of Class Action Settlement, substantially similar to the form attached hereto as **Exhibit A**, subject to Court approval.
10. **Class Period**: September 10, 2017, through the date the Court enters an order granting Preliminary Approval, or January 7, 2023 (sixty (60) days after the acceptance of the mediator's proposal), whichever occurs first.
11. **Class Representative or Plaintiff**: Arnold Garcia.
12. **Class Representative Enhancement Payment**: The amount the Court awards to Plaintiff, which will not exceed \$7,500. This payment shall be paid from the Gross Settlement Amount. This payment is being offered in consideration for Plaintiff executing a general release of claims against Defendants, a release that is broader than any Participating Class Member will provide in consideration for a settlement share. This payment is also offered in consideration for the Plaintiff's actions in conferring a benefit upon the State of California and the Class, and the time and effort Plaintiff put into pursuing the litigation. If the Court awards less than the amount requested, any amount not awarded will become part of the Net Settlement Amount for distribution to Participating Class Members.
13. **Cost Award**: The amount that the Court orders Defendants to pay Class Counsel for payment of actual litigation costs, which shall not exceed \$30,000. The Cost Award will be paid from the Gross Settlement Amount and will not

be opposed by Defendants. The Cost Award is subject to Court approval. If the actual costs incurred are less than the amount allocated in this Agreement, or if the Court awards less than the amount requested, the difference in the amount allocated in this Agreement and the amount awarded by the Court will become part of the Net Settlement Amount for distribution to Participating Class Members.

14. **Counsel for Defendant:** Lonnie D. Giamela and Victoria H. Shin of Fisher & Phillips LLP.
15. **Court:** Superior Court of California for the County of Alameda.
16. **Defendants:** McCollister's Transportation Systems, Inc., McCollister's Global Services, Inc., and McCollister's Auto Transport, LLC.
17. **Disbursement of the Settlement:** Within ten (10) business days after the Settlement Administrator's receipt of the Gross Settlement Amount, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Net PAGA Settlement Amount to Aggrieved Employees; (3) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (4) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (5) the Administration Costs, as approved by the Court; and (6) the LWDA Payment to the LWDA.
18. **Effective Final Settlement Date:** The effective date of this Settlement will be when the final approval of the settlement can no longer be appealed, or, if there are no objectors and no plaintiffs in intervention at the time the court grants final approval of the settlement, the date the court enters judgment granting final approval of the settlement.
19. **Employer-Side Settlement Payment Taxes:** Defendants' portion of payroll taxes that shall be owed under this Agreement based upon the designation of certain parts of the Settlement Payment as wages (including the employer's payment of applicable FICA, FUTA, and SUI contributions, etc.) owed to the appropriate local, state, and federal taxing authorities. Defendants will pay its portion of payroll taxes separate and apart from the Gross Settlement Amount.
20. **Final Judgment or Final Approval:** The final order entered by the Court approving this Agreement.
21. **Funding of Settlement:** Defendants shall wire or otherwise provide to the Settlement Administrator the Gross Settlement Amount no later than ten (10) business days of the Effective Final Settlement Date.

22. **Gross Settlement Amount or GSA:** The total value of the Settlement is a non-reversionary \$400,000. This is the gross amount Defendants can be required to pay under this Settlement Agreement, with the exception of their obligation to pay Employer-Side Settlement Payment Taxes. The Gross Settlement Amount includes without limitation: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorneys Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (4) the Administration Costs, as approved by the Court; and (5) the PAGA Payment to the LWDA and to Aggrieved Employees, as approved by the Court. Defendants' portion of payroll taxes as the Class Members' current or former employer will be paid outside of and in addition to the Gross Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendants for any reason.
23. **Individual Class Settlement Share(s):** The amount payable to each Participating Class Member under the terms of this Settlement Agreement. Class Members are not required to submit a claim form to receive their Individual Class Settlement Shares pursuant to this Agreement. Rather, Participating Class Members will receive an Individual Class Settlement Share automatically, without the return of a claim form.
24. **Individual PAGA Settlement Share(s):** The amount payable to each Aggrieved Employee under the terms of this Settlement Agreement. Aggrieved Employees are not required to submit a claim form to receive their Individual Settlement Shares pursuant to this Agreement. Also, even if an Aggrieved Employee requests exclusion from the Class Settlement as described in this Agreement, the Aggrieved Employee will receive an Individual PAGA Settlement Share. Therefore, Aggrieved Employees will receive an Individual PAGA Settlement Share automatically, without the return of a claim form and regardless of whether they request to be excluded from the Class Settlement.
25. **LWDA:** California Labor and Workforce Development Agency ("LWDA"). The LWDA is empowered to enforce the Labor Code Private Attorneys General Act, California Labor Code section 2698, *et seq.*, and has delegated such authority to Plaintiff with regard to the claim in this Action through the procedural mechanisms provided for by statute.
26. **LWDA Payment:** Refers to the Seventy-five percent (75%) of the PAGA Payment of \$25,000 that is to be paid to the LWDA as described in this Settlement.
27. **Net PAGA Settlement Amount or NPSA:** The total amount of money for payout to Aggrieved Employees, which is the PAGA Payment less the LWDA Payment.

28. **Net Settlement Amount or NSA:** The total amount of money available for payout to Participating Class Members, which is the GSA less the Attorneys Fee Award, Cost Award, Class Representative Enhancement Payment, the PAGA Payment, and Administration Costs. In other words, the NSA is the portion of the GSA that will be distributed to Participating Class Members. The payment of employee-side taxes on the portion of the settlement shares earmarked as wages shall be paid out of the Net Settlement Amount. Thus, the Individual Settlement Shares that are paid out of the Net Settlement Amount shall be reduced by the employee's tax liability for the share for the portion of the settlement shares allocated as wages.
29. **PAGA:** The California Labor Code Private Attorneys General Act of 2004 (Cal. Labor Code §§ 2698 *et seq.*).
30. **PAGA Data:** The electronic database Defendants shall deliver to the Settlement Administrator which will list the following information for each Aggrieved Employee: (1) first and last name; (2) last known mailing address; (3) social security number; and (4) the total number of weeks the total number of weeks during which the Aggrieved Employee performed work during the PAGA Period as a member of the Aggrieved Employees. The PAGA Data shall be based on Defendants' payroll, personnel, and other business records.
31. **PAGA Payment:** Refers to the \$25,000 the Parties have agreed to settle the PAGA claims. 75% of this amount, or \$18,750, shall be paid to the LWDA. The remaining 25% of the \$25,000, or \$6,250, shall become part of the Net PAGA Settlement Amount payable to Aggrieved Employees.
32. **PAGA Period:** July 1, 2020 through the date the Court enters an order granting Preliminary Approval, or January 7, 2023 (sixty (60) days after the acceptance of the mediator's proposal), whichever occurs first.
33. **PAGA Settlement:** Refers to the settlement of claims included in the Released PAGA Claims, for which Aggrieved Employees will receive an Individual PAGA Settlement Share payment.
34. **Participating Class Members:** All Class Members who do not submit a valid and timely request to exclude themselves from this Settlement.
35. **Parties:** Plaintiff Arnold Garcia, as an individual and as Class Representative, and Defendants McCollister's Transportation Systems, Inc., McCollister's Global Services, Inc., and McCollister's Auto Transport, LLC.
36. **Preliminary Approval or Preliminary Approval Order:** The Court's order preliminarily approving the Class Settlement.

37. **Released Class Claims:** The Released Class Claims include, for the entire Class Period, all claims made or that could have been made based on the facts and circumstances alleged in the Complaints, including claims under California Labor Code sections 201-204, 205.5, 210, 218, 218.5, 221-223, 224, 226, 226.7, 510, 512, 558, 1174, 1175, 1194, 1194.2, 1197, 1197.1, 1199, 2810.5 and 2802; California Business and Professions Code section 17200, *et seq.*, California Wage Order No. 9-2001; California Code of Regulations Title 8, section 11090; and any claim for attorneys' fees and costs related to the above-referenced released claims.
38. **Released PAGA Claims:** The Released PAGA Claims include, for the entire PAGA Period, all claims belonging to the State of California, the LWDA, and Plaintiff (as representative of the State of California, the LWDA, and the general public) under the California Private Attorney General Act ("PAGA"), Cal. Lab. Code § 2698, *et seq.* to the extent such claims are predicated on claims made or that could have been made based on the facts and circumstances alleged in the Complaints and Plaintiff's notice to the LWDA, including claims under California Labor Code sections 201-204, 205.5, 210, 218, 218.5, 221-223, 224, 226, 226.2, 226.7, 226.8, 510, 512, 558, 1174, 1175, 1194, 1194.2, 1197, 1197.1, 1199, 2802, and 2810.5; California Wage Order No. 9-2001; California Code of Regulations Title 8, sections 11070 and 11090; and any claim for attorneys' fees and costs related to the above-referenced released claims.
39. **Released Parties:** Defendants and their past, present and/or future, direct and/or indirect, officers, directors, employees, representatives, administrators, attorneys, agents, parent companies, subsidiaries, consultants, shareholders, predecessors, successors, and/or assigns.
40. **Response Deadline:** Sixty (60) calendar days from the initial mailing of the Class Notices.
41. **Settlement Administration:** The Settlement Administrator will use the National Change of Address Database to obtain updated addresses for Class Members. The Settlement Administrator will mail the Class Notices by first class U.S. mail to all Class Members at the address resulting from the search of the National Change of Address Database. The Class Notices will inform Class Members that they have until the Response Deadline to either object to the Settlement or to opt-out of the Settlement. Any Class Member who does not receive notice after the steps outlined above have been taken will still be bound by the Settlement and/or judgment.
42. **Settlement Administrator:** The third party administrator agreed upon by Parties to administer this Settlement is Phoenix Class Action Administration Solutions.

II. **RECITALS**

43. A class action complaint against Defendants was filed by Plaintiff in the Alameda County Superior Court on September 10, 2021 (Case No. RG21112345). The complaint alleged the following causes of action against Defendant: (1) failure to pay all straight time wages; (2) failure to provide meal periods; (3) failure to authorize and permit rest periods; (4) knowing and intentional failure to comply with itemized employee wage statement provisions; (5) failure to pay all wages at the time of termination of employment; (6) failure to reimburse business expenses; and (7) violation of Unfair Competition Law, on behalf Plaintiff and those similarly situated.
44. A PAGA representative action complaint against Defendants was filed by Plaintiff (as an agent of the LWDA) in the Alameda County Superior Court on September 9, 2021 (Case No. RG21112189). The complaint sought civil penalties under the PAGA in relation to the following alleged violations suffered by allegedly similar aggrieved employees: (1) failure to pay all straight time wages; (2) failure to provide meal periods; (3) failure to authorize and permit rest periods; (4) failure to pay all wages at the time of termination of employment; (5) knowing and intentional failure to comply with itemized employee wage statement provisions; (6) failure to pay all wages owed twice per month; (7) failure to reimburse business expenses; and (8) willful misclassification of employees as independent contractors.
45. The parties met and conferred regarding the cases on multiple occasions and then agreed to attend a mediation. Prior to the mediation, Defendants provided class-wide data, documents, and information permitting Plaintiff and his lawyers to fully evaluate class-wide exposure.
46. On August 16, 2021, the parties participated in a full-day mediation with respected wage and hour mediator, Mark Rudy. While the Parties did not settle at mediation, they continued the exchange of information and settlement negotiations in the following days with the assistance of Mr. Rudy. This culminated in a mediator's proposal being issued on November 8, 2022, which the Parties accepted and resulted in the settlement that is reflected in this Agreement.
47. **Benefits of Settlement to Class Members.** Plaintiff and Class Counsel recognize the expense and length of continued proceedings necessary to continue the litigation against Defendants through trial and through any possible appeals. Plaintiff and Class Counsel also have taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel have conducted extensive settlement negotiations. Based on the foregoing, Plaintiff and Class Counsel believe the Settlement set forth in this Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class Members.

- 48. Defendants' Reasons for Settlement.** Defendants recognize that the defense of this litigation will be protracted and expensive. Substantial amounts of time, energy, and resources of Defendants have been and, unless this Settlement is made, will continue to be devoted to the defense of the claims asserted by Plaintiff. Defendants, therefore, have agreed to settle in the manner and upon the terms set forth in this Agreement to put to rest the Released Claims.
- 49. Defendants' Denial of Wrongdoing.** Defendants generally and specifically deny any and all liability or wrongdoing of any sort with regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than settlement, the Action is not appropriate for class or representative treatment. Defendants assert a number of defenses to the claims, and have denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Action. Neither this Agreement, nor any document referred to or contemplated herein, nor any action taken to carry out this Agreement, is or may be construed as, or may be used as an admission, concession, or indication by or against Defendants or any of the Released Parties of any fault, wrongdoing, or liability whatsoever. Defendants specifically deny any allegation of misclassification. There has been no final determination by any court as to the merits of the claims asserted by Plaintiff against Defendants or as to whether a class or classes should be certified, other than for settlement purposes only.
- 50. Plaintiff's Claims.** Plaintiff asserts that Defendants' defenses are without merit. Neither this Agreement nor any documents referred to or contemplated herein, nor any action taken to carry out this Agreement is, may be construed as, or may be used as an admission, concession or indication by or against Plaintiff, Class Members, or Class Counsel as to the merits of any claims or defenses asserted, or lack thereof, in the Action. However, in the event that this Settlement is finally approved by the Court, the Plaintiffs, Participating Class Members, and Class Counsel will not oppose Defendants' efforts to use this Agreement to prove that Plaintiff and Participating Class Members have resolved and are forever barred from re-litigating the claims released under this Agreement.

III. SETTLEMENT TERMS AND CONDITIONS

- 51. Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the maximum Gross Settlement Amount, that Defendants are obligated to pay under this Settlement Agreement is \$400,000. The Gross Settlement Amount includes, but is not limited to: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Attorneys Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (3) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (4) the

Administration Costs, as approved by the Court; and (5) the PAGA Payment, as approved by the Court. Defendants' portion of payroll taxes as the Class Members' current or former employer will be paid outside of and in addition to the Gross Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendants for any reason.

A. Escalator Provision: Defendants make the following representations:

- The Settlement Class consisted of approximately 30 drivers as of November 8, 2022.
- The Class Period encompassed 2,690 workweeks as of November 8, 2022.

To the extent that either of the forgoing estimates, as represented by Defendants, increases by more than 20%, Defendants will have the option to increase the Gross Settlement Amount proportionately. For example, if the number of workweeks increases by 22% then Defendants shall increase the GSA by 2%. Likewise, if the number of class members increases by 22% then Defendant shall increase the GSA by 2%. If Defendants decline to do so, Plaintiff will have the option to terminate the settlement in its entirety and the Parties will be returned to their respective positions as if no settlement had been contemplated.

- 52. Class Certification.** Solely for the purposes of this Settlement, the Parties stipulate and agree to certification of the claims asserted on behalf of Class Members. As such, the Parties stipulate and agree that in order for this Settlement to occur, the Court must certify the Class as defined in this Agreement.
- 53. Conditional Nature of Stipulation for Certification.** The Parties stipulate and agree to the certification of the claims asserted on behalf of Plaintiff and Class Members for purposes of this Settlement only. If the Settlement does not become effective, the fact that the Parties were willing to stipulate to certification as part of the Settlement shall not be admissible or used in any way in connection with, the question of whether the Court should certify any claims in a non-settlement context in this Action or in any other lawsuit. If the Settlement does not become effective, Defendants reserve the right to contest any issues relating to class certification and liability.
- 54. Appointment of Class Representative.** Solely for the purposes of this Settlement, the Parties stipulate and agree Plaintiff Arnold Garcia shall be appointed as representative for the Class.
- 55. Appointment of Class Counsel.** Solely for the purpose of this Settlement, the Parties stipulate and agree that the Court appoint Class Counsel to represent the Class.

- 56. Individual Class Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual Class Settlement Share from the Net Settlement Amount to each Participating Class Member.

A. Calculation.

- i. **Individual Class Settlement Share Calculation.** Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of weeks he or she contracted with and drove for Defendants, based on the Class Data provided by Defendants, divided by (ii) the total number of weeks worked by all Participating Class Members based on the same Class Data, which is then multiplied by the Net Settlement Amount. One day worked in a given week will be credited as a work week for purposes of this calculation. Therefore, the value of each Class Member's Individual Settlement Share ties directly to the amount of weeks that he or she worked.

- B. Tax Withholdings.** Each Class Member's Individual Settlement Share will be apportioned as follows: 1/3 wages, 1/3 interest, and 1/3 penalties. The amounts paid as wages shall be subject to all tax withholdings customarily made from an employee's wages and all other authorized and required withholdings and shall be reported by W-2 forms. Payment of all amounts will be made subject to backup withholding unless a duly executed W-9 form is received from the payee(s). The amounts paid as penalties and interest shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms. Only the employee share of payroll tax withholdings shall be paid from each Class Member's Individual Settlement Share. The employer share of payroll tax withholdings shall be paid separate from and in addition to the Gross Settlement Amount.

- 57. Individual PAGA Settlement Share.** Subject to the terms and conditions of this Agreement, the Settlement Administrator will pay an Individual PAGA Settlement Share from the Net PAGA Settlement Amount to each Aggrieved Employee.

A. Calculation.

- i. **Individual PAGA Settlement Share Calculation.** Each Aggrieved Employee will receive a proportionate share of the Net PAGA Settlement Amount that is equal to (i) the number of weeks he or she contracted with and drove for Defendants,

based on the PAGA Data provided by Defendants, divided by (ii) the total number of weeks worked by all Aggrieved Employees based on the same PAGA data, which is then multiplied by the Net PAGA Settlement Amount. One day worked in a given week will be credited as a week for purposes of this calculation. Therefore, the value of each Aggrieved Employee's Individual PAGA Settlement Share ties directly to the amount of weeks that he or she worked during the PAGA Period.

B. Tax Withholdings. Each Aggrieved Employee's Individual PAGA Settlement Share will be apportioned as 100% penalties. The Individual PAGA Settlement Shares shall therefore be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 forms.

58. Constituents of Gross Settlement Amount Disbursement. Subject to the terms and conditions of this Agreement, the Settlement Administrator shall disburse the Gross Settlement Amount as directed later on herein to the following:

A. To the Named Plaintiff: In addition to his Individual Settlement Share, and subject to the Court's approval, the named Plaintiff, Arnold Garcia, will receive up to \$7,500 in consideration for providing Defendants a General Release, a release that is broader than the claims released by Participating Class Members. Defendants shall not oppose this request. The Settlement Administrator will pay the Class Representative Enhancement Payment out of the Gross Settlement Amount. Payroll tax withholdings and deductions will not be taken from the Class Representative Enhancement Payment. An IRS Form 1099 will be issued to Plaintiff with respect to his Class Representative Enhancement Payment.

B. To Class Counsel. At the Final Approval Hearing, Class Counsel will apply to the Court for an Attorneys Fee Award not to exceed 1/3 of the GSA (which equates to \$133,333.33) and a Cost Award not to exceed \$30,000. Defendants shall not oppose this request. The Settlement Administrator will pay the Court approved amounts for the Attorneys Fee Award and Cost Award out of the Gross Settlement Amount. The Settlement Administrator may, at the request of Class Counsel, purchase an annuity to utilize U.S. treasuries and bonds or other attorneys fee deferral vehicles for Class Counsel. Payroll tax withholding and deductions will not be taken from the Attorneys Fee Award or the Cost Award. IRS Forms 1099 will be issued to Class Counsel with respect to the Attorneys Fee Award. In the event the Court does not approve the entirety of the application for the Attorneys Fee Award and/or Cost Award, the Settlement Administrator shall pay whatever amount the Court awards, and neither Defendants nor the Settlement

Administrator shall be responsible for paying the difference between the amount requested and the amount awarded. If the amount awarded is less than the amount requested by Class Counsel for the Attorneys Fee Award and/or Cost Award, the difference shall become part of the NSA and be available for distribution to Participating Class Members.

- C. To the Responsible Tax Authorities.** The Settlement Administrator will pay the amount of the Participating Class Members' portion of normal payroll withholding taxes out of each Class Member's Individual Settlement Share. Defendants' portion of payroll taxes as the alleged current or former employer (including the employer's payment of applicable FICA, FUTA, and SUI contributions, etc.) will be paid outside of and in addition to the GSA. The Settlement Administrator will calculate the amount of the Participating Class Members' and Defendants' portion of payroll withholding taxes and will forward the amount of the Participating Class Members' portion of normal payroll withholding taxes to the appropriate taxing authorities.
- D. To the Settlement Administrator.** The Settlement Administrator – Phoenix Settlement Administrators – will pay to itself Administration Costs (reasonable fees and expenses) approved by the Court not to exceed \$5,000. This will be paid out of the Gross Settlement Amount. If the actual amount of Administration Costs is less than the amount estimated and/or requested, the difference shall become part of the NSA and be available for distribution to Participating Class Members.
- E. To the LWDA and Aggrieved Employees.** The Settlement Administrator will pay \$18,750 of the PAGA Payment to the LWDA. This is 75% of the \$25,000 allocated to satisfy the PAGA penalties claim. The remaining 25% of the PAGA Payment (which equates to \$6,250) shall become part of the Net PAGA Settlement Amount payable to Aggrieved Employees
- F. To Participating Class Members.** The Settlement Administrator will pay Participating Class Members according to the Individual Settlement Share calculations set forth above. All payments to Participating Class Members and Aggrieved Employees shall be made from the Gross Settlement Amount.

- 59. Appointment of Settlement Administrator.** Solely for the purposes of this Settlement, the Parties stipulate and agree that Phoenix Class Action Administration Solutions shall be retained to serve as Settlement Administrator. The Settlement Administrator shall be responsible for preparing, printing, and mailing the Class Notice to Class Members and Aggrieved Employees; performing skip traces and re-mailing notices to Class Members and Aggrieved Employees; calling Class Members and Aggrieved Employees with undeliverable notices to obtain accurate addresses; keeping track of any

objections or requests for exclusion from Class Members; calculating any and all payroll tax deductions as required by law; calculating each Class Member's and Aggrieved Employee's Individual Settlement Share; maintaining a website which will include settlement documents; providing weekly status reports to Defendants' Counsel and Class Counsel, which is to include updates on any objections or requests for exclusion that have been received; providing a due diligence declaration for submission to the Court prior to the Final Approval hearing; mailing and re-mailing Individual Settlement Shares to Participating Class Members and Aggrieved Employees; calculating and mailing the LWDA Payment to the LWDA; distributing the Attorneys Fee Award and Cost Award to Class Counsel; printing and providing Participating Class Members, Aggrieved Employees, and Plaintiff with W-2s and 1099 forms as required under this Agreement and applicable law; providing a due diligence declaration for submission to the Court upon the completion of the Settlement; providing any funds remaining in the QSF as a result of uncashed checks to Legal Aid at Work in the amounts directed per this Settlement; and for such other tasks as the Parties mutually agree. The Parties each represent that they do not have any financial interest in Phoenix Settlement Administrators or otherwise have a relationship with Phoenix Settlement Administrators that could create a conflict of interest.

60. Procedure for Approving Settlement.

A. Cooperation.

- i. All Parties and their counsel shall support the Settlement and take such steps as are reasonably necessary to effectuate the Settlement. Plaintiff shall prepare and file a stipulated request to consolidate both Complaints for settlement purposes. Should the Court decline to grant the Parties' request to consolidate both Complaints, the Parties and their counsel shall take any further reasonably necessary steps to effectuate the Settlement, including, but not limited to, stipulating for leave to amend in Case No. RG21112345 to include PAGA claims as alleged in Case No. RG21112189 and filing for dismissal of Case No. RG21112189 upon the Court's receipt and acceptance of an amended complaint in Case No. RG21112345. Plaintiff shall take all reasonable steps that may be deemed necessary by the Court to ensure that the two Complaints are consolidated for settlement purposes.

B. Motion for Preliminary Approval and Conditional Certification.

- i. Plaintiff will move for an order: (1) conditionally certifying the Class for settlement purposes only; (2) granting Preliminary Approval of the Settlement; (3) setting a date for the Final Approval hearing; and (4) approving the Class Notice.

- ii. At the same time that Plaintiff files his Motion for Preliminary Approval, Plaintiff shall send a copy of the Agreement to the LWDA pursuant to the 2016 amendments to PAGA.
- iii. At the Preliminary Approval hearing, Plaintiff will appear, support the granting of the motion, and submit a proposed order granting conditional certification of the Class and Preliminary Approval of the Settlement; appointing the Class Representative, Class Counsel, and Settlement Administrator; approving the Class Notice; and setting the Final Approval hearing.
- iv. **Effect of Denial of Preliminary Approval.** Should the Court decline to conditionally certify the Class or to Preliminarily Approve all material aspects of the Settlement, the Settlement Agreement will be null and void, and the Parties will have no further obligations under it. Provided, however, that the amounts of the Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment shall be determined by the Court, and the Court's determination on these amounts shall be final and binding, and that the Court's approval or denial of any amount requested for these items are not conditions of this Settlement Agreement, and are to be considered separate and apart from the fairness, reasonableness, and adequacy of the Settlement Agreement. Any order or proceeding relating to an application for the Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment shall not operate to terminate or cancel this Settlement Agreement. Nothing in this Agreement shall limit Plaintiff's or Class Counsel's ability to appeal any decision by the Court to award less than the requested Attorneys Fee Award, Cost Award, Administration Costs, and Class Representative Enhancement Payment.

C. Notice to Class Members and Aggrieved Employees. After the Court enters its Preliminary Approval Order, every Class Member and Aggrieved Employee will be provided with the Class Notice in accordance with the following procedure:

- i. **Delivery of Class and PAGA Data.** Within ten (10) business days after entry of the Preliminary Approval Order, Defendants shall deliver to the Settlement Administrator an electronic database, which will list the Class and PAGA Data. If any or all of this information is unavailable to Defendants, Defendants will so inform Class Counsel and the Parties will make their best efforts to reconstruct or otherwise agree upon how to deal with the

unavailable information. The Settlement Administrator will use the National Change of Address Database to obtain updated addresses for Class Members. The Class Data and PAGA Data shall be based on Defendants' payroll, personnel, and other business records. The Settlement Administrator shall maintain the Class and PAGA Data and all information contained within the Class and PAGA Data as private and confidential.

- ii. **Preparation of Class Notices.** Based on the information in the Class and PAGA Data and the formulae set forth in Paragraph 56(A)(i) and 57(A)(i), above, the Settlement Administrator shall promptly calculate the estimated Individual Settlement Share and Individual PAGA Settlement Share for every Class Member and Aggrieved Employee, to be included in the individualized Class Notices to be sent to that Class Member and/or Aggrieved Employee, and shall prepare and mail a spreadsheet setting forth those calculations to Class Counsel and Defense Counsel no fewer than five (5) days before mailing the Class Notices to Class Members and Aggrieved Employees. The Class Notices will inform each Class Member of his/her right to do nothing, dispute the number of work weeks worked, opt out of the Settlement, or object to the Settlement. It will also inform Class Members that if they first request exclusion from the Settlement and then object, the objections would not be considered valid. In addition, if the Class Members object and then request exclusion from the Class Settlement, the Class Members would be deemed to have waived their objection.
- iii. **Mailing of Class Notices.** Within ten (10) business days after receipt of the Class and PAGA Data, the Settlement Administrator will mail via first-class regular U.S. Mail the Class Notice to all identified Class Members and Aggrieved Employees using the mailing address information provided by Defendant and the results of the search of the National Change of Address Database on all Class Members and Aggrieved Employees.
- iv. **Returned Notices.** If a Class Notice is returned because of an incorrect address, within five (5) business days from receipt of the returned notice, the Settlement Administrator will conduct a search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. The Settlement Administrator will use the National Change of Address Database and skip traces to attempt to find the current address. The Settlement Administrator will be responsible for taking reasonable steps to trace the mailing address of any Class Member for whom a Class Notice is returned by U.S. Postal Service as undeliverable.

These reasonable steps shall include, at a minimum, the tracking of all undelivered mail, performing address searches for all mail returned without a forwarding address, and promptly re-mailing to Class Members for whom new addresses are found.

- v. **Undeliverable Notices.** If the Settlement Administrator is unable to locate a better address through a database search or skip trace, the Settlement Administrator shall promptly provide the contact information of the Class Member with the undeliverable Notice to Class Counsel. Class Counsel will provide this contact information to a third-party investigator to perform a TLOxp search using the available contact information. The TLOxp search performs a “deep skiptrace” of the Class Member and will have a greater chance of locating a better address to provide the Class Member with Notice. The costs for the TLOxp searches will be considered part of the Settlement Administration costs.
- vi. **Weekly Status Reports.** The Settlement Administrator shall provide a weekly status report to the Parties. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Defendants’ Counsel of the number of Notices mailed, the number of Notices returned as undeliverable, the number of Notices re-mailed, and the number of requests for exclusion or objections received.
- vii. **Settlement Administrator’s Declaration.** No later than fourteen (14) calendar days after the Response Deadline, or on a date mutually agreed upon by the Parties and the Settlement Administrator, the Settlement Administrator will serve on the Parties a declaration of due diligence setting forth its compliance with its obligations under this Agreement. The declaration from the Settlement Administrator shall also be filed with the Court by Class Counsel at the same time as the final approval motion is filed. Before the Final Approval hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

D. Objections to Settlement. The Class Notice will provide that the Class Members who wish to object to the Settlement must do so in writing, signed, dated, and mailed to the Settlement Administrator postmarked no later than the Response Deadline. The timeframe to submit an objection will not be increased for returned mailings.

- a. **Format.** Any Objections shall state: (a) the objecting person’s full name, address, and telephone number; (b) the words “Notice of

Objection” or “Formal Objection;” (c) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (d) list identifying witness(es) the objector may call to testify at the Final Approval hearing; and (e) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing.

- b. Notice of Intent to Appear.** Objecting Class Members may (though are not required to) appear at the Final Approval Hearing, either in person or through the objector’s own counsel. Objecting Class Members are permitted to appear regardless of whether they submitted a written objection.

E. Request for Exclusion from the Settlement (“Opt-Out”). The Class Notice will provide that Class Members who wish to exclude themselves from the Settlement must mail to the Settlement Administrator a written request for exclusion. The written request for exclusion must: (a) state the Class Member’s name, address, telephone number, and the last four digits of the Class Member’s social security number or employee identification number; (b) state the Class Member’s intention to exclude themselves from or opt-out of the Settlement; (c) be addressed to the Settlement Administrator; (d) be signed by the Class Member or his or her lawful representative; and (e) be postmarked no later than the Response Deadline.

- i. Effect of “Opt-Out.”** Any Class Member who returns a timely, valid, and executed request for exclusion will not participate in or be bound by the Settlement and subsequent judgment and will not receive an Individual Settlement Share or any benefit of this Settlement. If the Class Member is also an Aggrieved Employee as defined in this Agreement, however, he or she will still receive an Individual PAGA Settlement Share payment as approved by the Court. Aggrieved Employees have no right to opt-out of the PAGA Settlement.
- ii. Confirmation of Authenticity.** If there is a question about the authenticity of a signed request for exclusion, the Settlement Administrator may demand additional proof of the Class Member’s identity. Any Class Member who returns a timely, valid, and executed request for exclusion will not participate in or be bound by the Settlement and subsequent judgment and will not receive an Individual Settlement Share. A Class Member who does not complete and mail a timely request for exclusion will automatically be included in the Settlement, will receive an Individual Class Settlement Share, and be bound by all terms and conditions of the Settlement, if the Settlement is approved by the

Court, and by the subsequent judgment, regardless of whether he or she has objected to the Settlement.

- iii. **Report.** No later than five (5) business days after the Response Deadline, the Settlement Administrator will provide the Parties with a complete and accurate accounting of the number of Notices mailed to Class Members, the number of Notices returned as undeliverable, the number of Notices re-mailed to Class Members, the number of re-mailed Notices returned as undeliverable, the number of Class Members who objected to the Settlement and copies of their submitted objections, the number of Class Members who returned valid requests for exclusion, and the number of Class Members who returned invalid requests for exclusion.

F. Class Member and Aggrieved Employee Disputes. If a Class Member or Aggrieved Employee who receives a Class Notice wishes to dispute the number of work weeks listed on the Class Notice, the Class Member or Aggrieved Employee may notify the Settlement Administrator by mail or telephone no later than the Response Deadline and should produce any available supporting evidence, such as wage statements, offers of employment, termination letters, and/or other employment records, to the Settlement Administrator. The documentation should provide evidence of the dates the Class Member or Aggrieved Employee contends he or she worked for Defendants during the Class or PAGA Period. The Settlement Administrator shall then provide the documentation provided by the Class Member or Aggrieved Employee to Defendants. Defendants shall review its records, the documentation provided by the Class Member or Aggrieved Employee, and shall provide information to the Settlement Administrator in response to any such disputed claim. Defendants' records shall be presumed to be determinative, but the Settlement Administrator shall evaluate the evidence submitted by the Class Member or Aggrieved Employee and make the decision as to which dates should be applied. The determination by the Settlement Administrator shall be final and binding.

G. No Solicitation of Objection or Requests for Exclusion. Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, request exclusion from the Settlement, or appeal from the Judgment.

H. Motion for Final Approval.

- i. Class Counsel will file unopposed motions and memorandums in support thereof for Final Approval of the Settlement and the following payments in accord with the terms of the Settlement: (1) the Attorneys Fee Award; (2) the Cost Award; (3) Administrative

Costs; (4) the Class Representative Enhancement Payment; and (5) PAGA Payment. Class Counsel will also move the Court for an order of Final Approval (and associated entry of Judgment) releasing and barring any Released Class and PAGA Claims of the Participating Class Members and LWDA.

ii. Denial or Appeal of Final Approval. If the Court does not grant Final Approval of the Settlement, or if the Court's Final Approval of the Settlement is reversed or materially modified on appellate review, then this Settlement will become null and void. If that occurs, the Parties will have no further obligations under the Settlement, including any obligation by Defendants to pay the Gross Settlement Amount or any amounts that otherwise would have been owed under this Agreement. Further, should this occur, the Parties agree they shall be equally responsible for the Settlement Administrator's Administration Costs through that date. An award by the Court of a lesser amount than sought by Plaintiff and Class Counsel for the Class Representative Enhancement Payment, Attorneys Fee Award, Cost Award, and Administration Costs award will not constitute a material modification to the Settlement within the meaning of this paragraph.

iii. Proposed Order and Judgment. Upon Final Approval of the Settlement, the Parties shall present to the Court a proposed Final Approval Order, approving of the Settlement and entering Judgment in accordance therewith. After entry of Judgment, the Court shall have continuing jurisdiction over the action for purposes of: (1) enforcing this Settlement Agreement; (2) addressing settlement administration matters, and (3) addressing such post-judgment matters as may be appropriate under Court rules and applicable law.

I. Waiver of Right to Appeal. Provided that the judgment is consistent with the terms and conditions of this Agreement, if Class Members do not timely object to the Settlement, then the Parties and their respective counsel waive any and all rights to appeal from the judgment, including, but not limited to, all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate or set aside judgment, and any extraordinary writ, and the judgment will become non-appealable at the time it is entered. The waiver of appeal does not include any waiver of the right to oppose any appeal, appellate proceeding, or post-judgment proceeding.

J. Vacating, Reversing, or Modifying Judgment on Appeal. If, after a notice of appeal, the reviewing Court vacates, reverses, or modifies the judgment such that there is a material modification to the Settlement

Agreement, and that Court's decision is not completely reversed and the judgment is not fully affirmed on review by a higher Court, then this Settlement will become null and void and the Parties will have no further obligations under it. A material modification would include, but not necessarily be limited to, any alteration of the Gross Settlement Amount, an alteration in the calculation of the Net Settlement Amount, and any change to the calculation of the Individual Settlement Share.

K. Disbursement of Settlement Shares and Payments. Subject to the Court finally approving the Settlement, the Settlement Administrator shall distribute funds pursuant to the terms of this Agreement and the Court's Final Approval Order and Judgment. The Settlement Administrator shall keep Defendants' Counsel and Class Counsel apprised of all distributions from the Gross Settlement Amount. The Settlement Administrator shall respond to questions from Defendants' Counsel and Class Counsel. No person shall have any claim against Defendants, Defendants' Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on the distributions and payments made in accordance with this Agreement.

- i. Funding the Settlement:** Defendants shall wire or otherwise provide to the Settlement Administrator the Gross Settlement Amount no later than ten (10) business days of the Effective Final Settlement Date.
- ii. Disbursement:** Within ten (10) business days after the Defendants provides the GSA to the Settlement Administrator, the Settlement Administrator shall disburse: (1) the Net Settlement Amount to be paid to Participating Class Members; (2) the Net PAGA Settlement Amount to be Paid to Aggrieved Employees; (3) the Attorney Fee Award and Cost Award to Class Counsel for attorneys' fees and costs, as approved by the Court; (4) the Class Representative Enhancement Payment paid to the Class Representative, as approved by the Court; (5) the Administration Costs, as approved by the Court; (6) the LWDA Payment to the LWDA; and (7) Defendants' portion of payroll taxes as the Class Members' current or former employer.
- iii. Qualified Settlement Fund or QSF:** The Parties agree that the QSF is intended to be a "Qualified Settlement Fund" under Section 468B of the Code and Treasury Regulations § 1.468B-1, 26 C.F.R. § 1.468B-1 *et seq.*, and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. § 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.

L. Settlement Administrator's Final Report. Within ten (10) business days after the disbursement of all funds, the Settlement Administrator will serve on the Parties a declaration providing a final report on the disbursements of all funds. The Parties shall file this declaration with the Court. The Settlement Administrator will provide any supplemental declaration required by the Court or the Parties.

M. Uncashed Checks. Participating Class Members and Aggrieved Employees must cash or deposit their Individual Settlement Share checks within one hundred and eighty (180) calendar days after the checks are mailed to them.

i. Reminder Postcard. If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating that unless the check is redeemed or deposited in the next ninety (90) days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced.

ii. If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed, cancel the checks. All funds associated with the Individual Settlement Share checks returned as undeliverable and funds associated with those checks remaining un-cashed shall be tendered to Legal Aid at Work. Legal Aid at Work is a nonprofit legal services organization that has been assisting low-income, working families for more than 100 years. Legal Aid at Work's Wage Protection Program represents low-wage workers who are the victims of wage violations. The wage claims made by Legal Aid at Work's clients are often the same type of claims made in wage-and-hour class actions brought by workers under the federal Fair Labor Standards Act and under California wage-and-hour laws.

N. Defendants' Legal Fees. Defendants are responsible for paying for all of Defendants' own legal fees, costs, and expenses incurred in this Action outside of the Gross Settlement Amount.

61. Release of Class Claims. As of the Effective Final Settlement Date, Class Members who do not submit a timely and valid request for exclusion release the Released Parties from the Released Class Claims. Participating Class Members agree not to sue or otherwise make a claim against any of the Released Parties for any of the Released Class Claims.

- 62. Release of PAGA Claims.** As of the Effective Final Settlement Date, the Released Parties shall be entitled to a release from the LWDA and Plaintiff (as representative of the State of California, the LWDA, and the general public) as to all Released PAGA Claims. Defendants will be entitled to assert this Settlement of the PAGA Claims in this Action as a defense to future claims against it for penalties by the LWDA or under the PAGA on behalf of the LWDA. The Released Parties will also be entitled to assert this release of PAGA Claims to assert claim or issue preclusion or other effects of this Settlement if any Aggrieved Employees bring a subsequent claim on behalf of the LWDA concerning the same primary rights that were at issue in this Action. Aggrieved employees may not opt out of the PAGA Settlement.
- 63. Plaintiff's Release of Claims and General Release.** As of the Effective Final Settlement Date, and in exchange for the Class Representative Enhancement Payment to the named Plaintiff in an amount not to exceed \$7,500, Plaintiff Arnold Garcia shall give the following general release of claims for himself and his respective spouse, heirs, successors and assigns, forever release the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties and expenses of any nature whatsoever, from the beginning of time through the date of their signatures on this Agreement, known or unknown, suspected or unsuspected, whether in tort, contract, equity, or otherwise, for violation of any federal, state or local statute, rule, ordinance or regulation, including but not limited to all claims arising out of, based upon, or relating to his employment with Defendants or the remuneration for, or termination of, such employment. Plaintiff's Release of Claims also includes a waiver of California Civil Code section 1542, which provides as follows:

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

This release excludes any release of any claims not permitted to be released by law.

64. Miscellaneous Terms

- A. No Admission of Liability.** Defendants make no admission of liability or wrongdoing by virtue of entering into this Agreement. Additionally, Defendants reserve the right to contest any issues relating to class certification and liability if the Settlement is not approved. Defendants deny that it has engaged in any unlawful activity, has failed to comply with the

law in any respect, has any liability to anyone under the claims asserted in the Action, or that but for the Settlement, a Class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendants of liability or wrongdoing. This Settlement and Plaintiff's and Defendants' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (other than solely in connection with this Settlement).

- B. No Effect on Employee Benefits.** The Class Representative Enhancement Payment and/or Individual Settlement Shares paid to Plaintiff and Participating Class Members and/or Aggrieved Employees shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*e.g.*, vacation, holiday pay, retirement plans, etc.) of Plaintiff or the Participating Class Members or Aggrieved Employees. The Parties agree that any Class Representative Enhancement Payment and/or Individual Settlement Share paid to Plaintiff or the Participating Class Members and/or Aggrieved Employees under the terms of this Agreement do not represent any modification of Plaintiff's or Participating Class Members' and/or Aggrieved Employees' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendants. Further, any Class Representative Enhancement Payment shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee pension benefit plan or employee welfare benefit plan sponsored by Defendants.
- C. Integrated Agreement.** After this Agreement is signed and delivered by all Parties and their counsel, this Agreement and its exhibits will constitute the entire Agreement between the Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants, or inducements have been made to any party concerning this Agreement or its exhibits, other than the representations, warranties, covenants, and inducements expressly stated in this Agreement and its exhibits.
- D. Authorization to Enter Into Settlement Agreement.** Class Counsel and Defendants' Counsel warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to

implement this Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions, and assistance of the Court will be consistent with this Agreement.

- E. Exhibits and Headings.** The terms of this Agreement include the terms set forth in the attached exhibits, which are incorporated by this reference as though fully set forth herein. Any exhibits to this Agreement are an integral part of the Settlement and must be approved substantially as written. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.
- F. Interim Stay of Proceedings.** The Parties agree to stay and hold all proceedings in the Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the Final Approval hearing to be conducted by the Court.
- G. Amendment or Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by counsel for all Parties or their successors-in-interest.
- H. Agreement Binding on Successors and Assigns.** This Agreement will be binding upon, and inure to the benefit of, the successors and assigns of the Parties, as previously defined.
- I. No Prior Assignment.** Plaintiff hereby represents, covenants, and warrants that he has not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged.
- J. Applicable Law.** All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.
- K. Fair, Adequate, and Reasonable Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, current and potential.

L. No Tax or Legal Advice. The Parties understand and agree that the Parties are neither providing tax or legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement, and that Class Members and Aggrieved Employees will assume any such tax obligations or consequences that may arise from this Agreement, and that Class Members and Aggrieved Employees shall not seek any indemnification from the Parties or any of the Released Parties in this regard. The Parties agree that, in the event that any taxing body determines that additional taxes are due from any Class Member or Aggrieved Employee, such Class Member assumes all responsibility for the payment of such taxes.

M. Jurisdiction of the Court. The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgment entered in connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments in connection therewith.

N. Invalidity of Any Provision; Severability. Before declaring any provision of this Agreement invalid, the Parties request that the Court first attempt to construe the provisions valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.

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

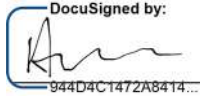
P. Execution in Counterpart. This Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile or PDF signatures will be accepted. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel execute this Agreement.
[signatures on the following page]

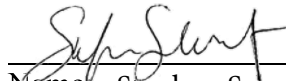
Dated: 1/5/2023

ARNOLD GARCIA

DocuSigned by:

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Dated: 2/7/2023

**MCCOLLISTER'S TRANSPORTATION
SYSTEMS, INC.; MCCOLLISTER'S GLOBAL
SERVICES, INC.; MCCOLLISTER'S AUTO
TRANSPORT, LLC**


Name: Stephen Schukraft
Title: General Counsel

Dated: 1/17/2023

MARA LAW FIRM, PC


David Mara, Esq.
Matthew Crawford, Esq.
Attorneys for Plaintiff, on behalf of himself, and the
Settlement Class

Dated: January 17, 2023

HUNTER PYLE LAW


Hunter Pyle, Esq.
John J. Darin, Esq.
Attorneys for Plaintiff, on behalf of himself, and the
Settlement Class

Dated: 2/7/23

FISHER & PHILLIPS LLP


Lonnie D. Giamela, Esq.
Victoria H. Shin, Esq.
Attorneys for Defendants

Exhibit A

CALIFORNIA SUPERIOR COURT, COUNTY OF ALAMEDA

Arnold Garcia, on behalf of himself, all others similarly situated, and on behalf of the general public, Plaintiff,
vs. McCollister's Transportation Systems, Inc., et al., Defendants
Case No. RG21112345 and Case No. RG21112189 ("Complaints" or "Action")

NOTICE OF CLASS ACTION SETTLEMENT

A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected by whether you act or don't act.

TO: All persons who contracted with McCollister's Transportation Systems, Inc., McCollister's Global Services, Inc., and McCollister's Auto Transport, LLC ("McCollister's") as an owner/operator to haul freight, who worked a majority of their time under the contract in California and/or had their base of operations in California, whom McCollister's classified as independent contractors, and who drove in California from September 10, 2017, through January 7, 2023.

The California Superior Court, County of Alameda has granted preliminary approval to a proposed settlement ("Settlement") of the above-captioned actions ("Action"). Because your rights may be affected by this Settlement, it is important that you read this Notice of Class Action Settlement ("Notice") carefully.

The Court has certified the following class for settlement purposes ("Class" or "Class Members"):

All persons who contracted with McCollister's as an owner/operator to haul freight, who worked a majority of their time under the contract in California and/or had their base of operations in California, whom McCollister's classified as independent contractors, and who drove in California from September 10, 2017, through January 7, 2023.

The purpose of this Notice is to provide a brief description of the claims alleged in the Action, the key terms of the Settlement, and your rights and options with respect to the Settlement.

YOU MAY BE ENTITLED TO MONEY UNDER THE PROPOSED CLASS ACTION SETTLEMENT. PLEASE READ THIS NOTICE CAREFULLY; IT INFORMS YOU ABOUT YOUR LEGAL RIGHTS.

WHAT INFORMATION IS IN THIS NOTICE

1. Why Have I Received This Notice?.....	Page 2
2. What Is This Case About?	Page 2
3. Am I A Class Member? Am I An Aggrieved Employee?	Page 2
4. How Does This Class Action Settlement Work?	Page 3
5. Who Are the Attorneys Representing the Parties?	Page 3
6. What Are My Options?	Page 3
7. How Do I Opt Out or Exclude Myself From This Settlement?	Page 4
8. How Do I Object to the Settlement?	Page 4
9. How Does This Settlement Affect My Rights?	Page 5
10. How Much Can I Expect to Receive From This Settlement?	Page 5
11. How Will the Attorneys for the Class and the Class Representatives Be Paid?	Page 7

1. *Why Have I Received This Notice?*

McCollister's Transportation Systems, Inc., McCollister's Global Services, Inc., and McCollister's Auto Transport, LLC's (hereinafter referred to as "McCollister's" or "Defendants") records indicate that you may be a Class Member. The settlement will resolve all Class Members' Released Claims, as described in Section No. 9 below, from September 10, 2017, through January 7, 2023 (the "Class Period").

A Preliminary Approval Hearing was held on [the date of Preliminary Approval], in the California Superior Court, County of Alameda. The Court conditionally certified the Class for settlement purposes only and directed that you receive this Notice.

The Court will hold a Final Fairness Hearing concerning the proposed settlement on [the date of final approval hearing], 2023 at [time a.m./p.m.], before Judge Brad Seligman, located at 1221 Oak Street, Oakland, CA 94612, Department 23.

2. *What Is This Case About?*

A class action complaint against Defendants was filed by Plaintiff in the Alameda County Superior Court on September 10, 2021 (Case No. RG21112345). The complaint alleged the following causes of action against Defendant: (1) failure to pay all straight time wages; (2) failure to provide meal periods; (3) failure to authorize and permit rest periods; (4) knowing and intentional failure to comply with itemized employee wage statement provisions; (5) failure to pay all wages at the time of termination of employment; (6) failure to reimburse business expenses; and (7) violation of Unfair Competition Law, on behalf Plaintiff and those similarly situated.

A PAGA representative action complaint against Defendants was filed by Plaintiff (as an agent of California's Labor and Workforce Development Agency, or "LWDA") in the Alameda County Superior Court on September 9, 2021 (Case No. RG21112189). The complaint sought civil penalties under the PAGA in relation to the following alleged violations suffered by allegedly similar aggrieved employees: (1) failure to pay all straight time wages; (2) failure to provide meal periods; (3) failure to authorize and permit rest periods; (4) failure to pay all wages at the time of termination of employment; (5) knowing and intentional failure to comply with itemized employee wage statement provisions; (6) failure to pay all wages owed twice per month; (7) failure to reimburse business expenses; and (8) willful misclassification of employees as independent contractors.

The two cases (Case No. RG21112345 and RG21112189) have been consolidated for settlement purposes. The Court has not made any determination as to whether the claims advanced by the Plaintiff have any merit. In other words, the Court has not determined whether any laws have been violated, nor has it decided in favor of Plaintiff or McCollister's; instead, both sides agreed to resolve the lawsuit with no decision or admission of who is right or wrong. By agreeing to resolve the lawsuit, all parties avoid the risks and cost of a trial.

McCollister's expressly denies that it did anything wrong or that it violated the law and further deny any liability whatsoever to Plaintiff or to the Class.

3. *Am I A Class Member? Am I An Aggrieved Employee?*

You are a Class Member if you contracted with McCollister's as an owner/operator to haul freight, and worked a majority of your time under the contract in California and/or had your base of operations in California,

McCollister’s classified you as an independent contractor, and you drove in California at any point from September 10, 2017, January 7, 2023.

If you contracted with McCollister’s as an owner/operator to haul freight, who worked a majority of your time under the contract in California and/or had your base of operations in California, McCollister’s classified you as an independent contractor, and you drove in California at any point from July 1, 2020 through January 7, 2023, you are also an “Aggrieved Employee” under the settlement.

4. How Does This Class Action Settlement Work?

Plaintiff Arnold Garcia brings this action behalf of himself and all other similarly situated individuals who contracted with McCollister’s as an owner/operator to haul freight in California at any time during the Class Period. Plaintiff and these other individuals comprise a “Class” and are “Class Members.” The settlement of this Action resolves the Released Claims of all Class Members, as defined in the Settlement Agreement and Final Judgment, except for those who exclude themselves from the Class by requesting to be excluded in the manner set forth below.

Plaintiff and Class Counsel believe the settlement is fair and reasonable. The Court must also review the terms of the settlement and determine if it is fair and reasonable to the Class. The Court file has the settlement documents, which explain the settlement in greater detail. If you would like copies of the settlement documents, you can obtain them for a nominal fee by visiting the Alameda Superior Court website by visiting <http://www.alameda.courts.ca.gov/pages.aspx/domainweb> and inputting the case number RG21112345 or RG21112189, or you can contact Plaintiff’s counsel, whose contact information is below, and they will provide you with a copy free of charge.

5. Who Are the Attorneys Representing the Parties?

Attorneys for Plaintiff and the Class	Attorneys for Defendants
MARA LAW FIRM, PC David Mara Matthew Crawford 2650 Camino Del Rio North, Suite 205 San Diego, California 92108 Telephone: (619) 234-2833 Facsimile: (619) 234-4048 HUNTER PYLE LAW Hunter Pyle John J. Darin 1300 Broadway, Eleventh Floor Oakland, California 94612 Telephone (510) 444-4400	FISHER & PHILLIPS LLP Lonnie D. Giamela Victoria H. Shin 444 S Flower St., Suite 1590 Los Angeles, CA 90071 Telephone: (213) 330-4454 Facsimile: (213) 330-4501

The Court has decided that Mara Law Firm, PC and Hunter Pyle Law are qualified to represent you and all other Class Members simultaneously.

You do not need to hire your own attorney because Class Counsel is working on your behalf. But, if you want your own attorney, you may hire one at your own cost.

6. What Are My Options?

The purpose of this Notice is to inform you of the proposed settlement and of your options. Each option has its consequences, which you should understand before making your decision. Your rights regarding each option, and the steps you must take to select each option, are summarized below and explained in more detail in this Notice.

Important Note: *Defendants will not retaliate against you in any way for either participating or not participating in this Settlement.*

- **DO NOTHING:** If you do nothing and the Court grants final approval of the Settlement, you will become part of this Class Action and may receive a payment from the Settlement. You will be bound to the release of the Released Class Claims as defined in the Settlement Agreement and the Final Judgment. You will also give up your right to pursue the Released Class Claims as defined in Section No. 9 below.
- **OPT OUT:** If you do not want to participate as a Class Member, you may “opt out,” which will remove you from the Class and this Class Action. If the Court grants final approval of the Settlement, you will not receive a Settlement payment and you will not give up the right to sue Defendants and the Released Parties for the Released Class Claims. If you are an Aggrieved Employee, you will receive a portion of the PAGA, even if you opt-out of the settlement.
- **OBJECT:** You may file a legal objection to the proposed settlement. If you would like to object, you may not opt out of this case.

7. How Do I Opt Out Or Exclude Myself From This Settlement?

If you do not want to take part in the Settlement, you must mail a written Request for Exclusion to the Settlement Administrator. The written request for exclusion must: (a) state your name, address, telephone number, and social security number or employee identification number; (b) state your intention to exclude yourself from or opt-out of the Settlement; (c) be addressed to the Settlement Administrator at [address]; (d) be signed by you or your lawful representative; and (e) be postmarked no later than [the Response Deadline].

If the Court approves the Settlement at the Final Approval Hearing, the Court will enter a Judgment. If you do not request exclusion from the Settlement, the Judgment will bind you to the terms of the Settlement. If you are an Aggrieved Employee, you will receive a portion of the PAGA Payment, even if you opt-out of the settlement.

8. How Do I Object To The Settlement?

If you are a Class Member who does not opt out of the Settlement, you may object to the Settlement, personally or through an attorney, by submitting your objection in writing, signed, dated, and mailed to the Settlement

Administrator postmarked no later than [the Response Deadline]. The objection must state: (a) the case name; (b) your full name, address, and telephone number; (c) the words “Notice of Objection” or “Formal Objection;” (d) describe, in clear and concise terms, the legal and factual arguments supporting the objection; (e) list identifying witness(es) the objector may call to testify at the Final Approval hearing; and (f) provide true and correct copies of any exhibit(s) the objector intends to offer at the Final Approval hearing. The objection will not be valid if it objects only to the appropriateness of the action or its merits.

Class Members may appear at the Final Approval Hearing, either in person or through the objector’s own counsel. If the Court rejects the objection, he/she will receive an Individual Settlement Share payment and will be bound by the terms of the Settlement.

9. *How Does This Settlement Affect My Rights? What are the Released Claims?*

If the proposed settlement is approved by the Court, a Final Judgment will be entered by the Court. All Class Members who do not opt out of the Settlement will be bound by the Court’s Final Judgment and will release Defendants and the Released Parties¹ from the Released Class Claims:

The Released Class Claims include, for the entire Class Period, all claims made or that could have been made based on the facts and circumstances alleged in the Complaints, including claims under California Labor Code sections 201-204, 205.5, 210, 218, 218.5, 221-223, 224, 226, 226.7, 510, 512, 558, 1174, 1175, 1194, 1194.2, 1197, 1197.1, 1199, 2810.5 and 2802; California Business and Professions Code section 17200, *et seq.*; California Wage Order No. 9-2001; California Code of Regulations Title 8, section 11090; and any claim for attorneys’ fees and costs related to the above-referenced released claims.

Additionally, the LWDA will be bound by the Final Judgment and will release the Released Parties from the Released PAGA Claims. The Released PAGA Claims include all claims under the California Private Attorney General Act (“PAGA”), Cal. Lab. Code § 2698, *et seq.* to the extent such claims are predicated on claims made or that could have been made based on the facts and circumstances alleged in the Complaints and Plaintiff’s notice to the LWDA, including claims under California Labor Code sections 201-204, 205.5, 210, 218, 218.5, 221-223, 224, 226, 226.2, 226.7, 226.8, 510, 512, 558, 1174, 1175, 1194, 1194.2, 1197, 1197.1, 1199, 2802, and 2810.5; California Wage Order No. 9-2001; California Code of Regulations Title 8, sections 11070 and 11090; and any claim for attorneys’ fees and costs related to the above-referenced released claims.

10. *How Much Can I Expect to Receive From This Settlement?*

The total maximum amount that Defendants could be required to pay under this Agreement shall be up to but no more than \$400,000 (“Gross Settlement Amount” or “GSA”).

A. Deductions from the Settlement

The “Net Settlement Amount” or “NSA” means the portion of the Gross Settlement Amount, available for distribution to Class Members after the deduction of (1) the Class Representative Enhance Payment to the named Plaintiff in an amount up to \$7,500, for prosecution of the Action, risks undertaken for the payment of attorneys’

¹ “Released Parties” means Defendants and its past, present and/or future, direct and/or indirect, officers, directors, employees, representatives, administrators, attorneys, agents, parent companies, subsidiaries and affiliated corporations and entities, consultants, shareholders, joint ventures, predecessors, successors, and/or assigns.

fees and costs, and a general release of all claims; (2) the Settlement Administration Costs to the Settlement Administrator in an amount estimated not to exceed \$5,000; (3) a payment of \$25,000 allocated to the PAGA claims; and (4) payment to Class Counsel in an amount not to exceed \$133,333.33 (1/3 of the Gross Settlement Amount) for attorneys' fees and an amount not to exceed \$30,000 for litigation costs. All of these payments are subject to court approval.

B. How Class Member Settlement Payments are Calculated

After deducting the above-referenced items, the remaining Net Settlement Amount, will be proportionately distributed amongst all Class Members who have not opted out. Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to (i) the number of weeks he or she contracted with and drove for Defendants, based on the Class Data provided by Defendants, divided by (ii) the total number of weeks worked by all Participating Class Members based on the same Class Data, which is then multiplied by the Net Settlement Amount. One day worked in a given week will be credited as a work week for purposes of this calculation. Therefore, the value of each Class Member's Individual Settlement Share ties directly to the amount of weeks that he or she worked during the Class Period (September 10, 2017, through January 7, 2023).

C. How Aggrieved Employee Settlement Payments are Calculated

If you are an Aggrieved Employee under the settlement, you will also receive a portion of the PAGA Payment. Pursuant to PAGA, the LWDA will receive a payment of \$18,750 (75% of the \$25,000 total PAGA Payment). The remaining \$6,250 is the "Net PAGA Settlement Amount" or "NPSA" and will be proportionately distributed amongst all Aggrieved Employees. Each Aggrieved Employee will receive a proportionate share of the Net PAGA Settlement Amount that is equal to (i) the number of weeks he or she contracted with and drove for Defendants, based on the PAGA Data provided by Defendants, divided by (ii) the total number of weeks worked by all Aggrieved Employees based on the same PAGA data, which is then multiplied by the Net PAGA Settlement Amount. One day worked in a given week will be credited as a week for purposes of this calculation. Therefore, the value of each Aggrieved Employee's Individual PAGA Settlement Share ties directly to the amount of weeks that he or she worked during the PAGA Period (July 1, 2020 through January 7, 2023).

D. Your Estimated Settlement Payment

Although your exact share of the Net Settlement Amount as a Class Member cannot be precisely calculated until after the time during which individuals may object or seek exclusion from the Settlement concludes, based upon the calculation above, your approximate share of the Net Settlement Amount, is as follows: \$ [REDACTED], less taxes. This is based on the Class Data which shows you worked [REDACTED] workweeks during the Class Period.

If you are also an Aggrieved Employee, you will receive a share of the Net PAGA Settlement Amount. Based upon the calculation above, your approximate share of the Net PAGA Settlement Amount, is as follows: \$ [REDACTED]. This is based on the PAGA Data which shows you worked [REDACTED] workweeks during the PAGA Period.

E. Tax Treatment of Your Settlement Payments

One-third (1/3) of each Individual Class Settlement Share is intended to settle each Class Member's claims for unpaid wages (the "Wage Portion"). The Wage Portion will be reduced by applicable payroll tax withholdings and deductions. Defendants' share of legally required payroll taxes for the Wage Portion will be calculated by the Settlement Administrator and paid by Defendants separately from the GSA. The Settlement Administrator will issue an IRS Form W-2 to each Participating Class Member with respect to the Wage Portion of his/her Individual

Class Settlement Share.

One-third (1/3) of the Individual Class Settlement Share is intended to settle each Class Member's claims for interest, and one-third (1/3) of the Individual Class Settlement Share is intended to settle each Class Member's claims for penalties. The Non-Wage Portion will not be reduced by payroll tax withholding and deductions. The Settlement Administrator will issue to each Participating Class Member an IRS Form 1099 with respect to the Non-Wage Portion of his/her Individual Class Settlement Share.

If you are an Aggrieved Employee, your Individual PAGA Settlement Share will be apportioned as 100% penalties. This will not be reduced by payroll tax withholding and deductions. The Settlement Administrator will issue to each Aggrieved Employee an IRS Form 1099 with respect to his/her Individual PAGA Settlement Share.

F. What Happens If You Don't Cash Your Check?

It is strongly recommended that upon receipt of your settlement check, you immediately cash it or cash it before the 180-day void date shown on each check. If any checks remain uncashed or not deposited by the expiration of the 180-day period, the Settlement Administrator will pay over the amount represented by the check to Legal Aid at Work.

11. *How Will the Attorneys for the Class and the Class Representative Be Paid?*

The attorneys for Plaintiff and the Class will be paid from the Gross Settlement Amount. Subject to Court approval, the attorneys for Plaintiff and the Class shall be paid an amount not to exceed 1/3 of the Gross Settlement Amount (\$133,333.33) for attorney fees and \$30,000 for litigation costs.

Defendants have paid all of their own attorneys' fees and costs.

Plaintiff will also be paid, subject to Court approval, an amount not to exceed \$7,500, as an enhancement for the initiation of and prosecution of this case, the risks undertaken for the payment of costs in the event this case had been lost, and a general release of all claims.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact Class Counsel listed above, or the Settlement Administrator at the telephone number listed below, toll free. You can also obtain documents related to this case and this settlement by visiting [\[administrator website\]](#), a website maintained by the Settlement Administrator. Please refer to the McCollister's Class Action Settlement.

This Notice does not contain all of the terms of the proposed settlement or all of the details of these proceedings. For more detailed information, you may refer to the underlying documents and papers on file with the Court at 1221 Oak Street, Oakland, CA 94612, Department 23 or obtain them for a nominal fee by visiting the Alameda Superior Court website by visiting <http://www.alameda.courts.ca.gov/pages.aspx/domainweb> and inputting the case number RG21112345. You may also contact Plaintiff's counsel, whose contact information is above, and they will provide you with a copy of the settlement documents or case documents free of charge.

PLEASE DO NOT TELEPHONE THE COURT OR COURT'S CLERK FOR INFORMATION ABOUT THIS SETTLEMENT.