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Attorneys for Plaintiffs ANDREW D. TAPPIN, DONYEISHA MISH,  
DARNELL LEE, LUIS ROBLES, XOCHITL VELASCO and  
VICTOR GONZALEZ, individually and on behalf of all others similarly situated.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SACRAMENTO**

ANDREW D. TAPPIN, DONYEISHA MISH,  
DARNELL LEE, LUIS ROBLES, XOCHITL  
VELASCO, and VICTOR GONZALEZ,  
individually and on behalf of all others similarly  
situated, and on behalf of the general public as  
private attorney general,

Plaintiff,

vs.

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

Defendants.

Case No. 34-2022-00314820-CU-OE-GDS

Assigned for All Purposes to:

Hon. Jill H. Talley

Dept. 23

DECLARATION OF SAMUEL ALMON IN  
SUPPORT OF MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
AND REPRESENTATIVE ACTION  
SETTLEMENT

Date: June 21, 2024

Time: 9:00 a.m.

Dept. 23

**DECLARATION OF SAMUEL ALMON**

I, Samuel Almon, declare and state as follows:

1. I am an attorney licensed and admitted to practice before all courts of the State of California, the United States District Courts for the Central, Eastern, Northern, and Southern Districts of California, the Ninth Circuit Court of Appeals, as well as in the State of Georgia and the State of Massachusetts (inactive status). I am a partner at Makarem & Associates APLC, the counsel of record for Plaintiffs Donyeisha Mish, Darnell Lee, Luis Robles, Xochitl Velasco, and Victor Gonzalez. I am one of the attorneys handling this case, and have personal knowledge of the facts set forth herein, except where indicated otherwise. If called upon to do so, I could and would testify competently thereto.

2. Attached hereto as **Exhibit 1** is a true and correct copy of the executed Stipulation of Class and Representative Action Settlement and Release (“Agreement” or “Settlement”).

3. After inquiry to other individuals at my firm, I am unaware of any other matters that would overlap with the claims being released in this matter, or with the proposed settlement class in this matter.

**FACTUAL BACKGROUND AND ALLEGATIONS**

4. Defendant TForce, formerly known as UPS Ground Freight, a subsidiary of TFI International, is a renowned freight carrying corporation founded in 1935. It employs thousands of employees and owns and operates over 20 package and delivery locations throughout California.

5. Plaintiffs worked for Defendants during the class period as follows:

(a) Plaintiff Donyeisha Mish was employed by Defendants as a non-exempt employee working as a parts clerk in California at Defendants’ Bloomington, California location from approximately January 2007 to October 2020;

(b) Plaintiff Darnell Lee is a current employee of Defendants, and has been employed by Defendants as a non-exempt employee working as a local pickup and delivery driver in California from approximately 2003 through the present. He worked at the Defendants’ Rialto, California location until approximately early 2021, and since that time has worked at Defendants’ Fontana, California location;

1 (c) Plaintiff Luis Robles was employed by Defendants as a non-exempt employee  
2 working as a Mechanic/Test Driver in California at Defendants' Rialto, California location from  
3 approximately May 5, 2007 to August 4, 2019;

4 (d) Plaintiff Xochitl Velasco is a current employee of Defendants and has been  
5 employed by Defendants as a non-exempt employee in California from approximately 2007 through  
6 the present. From approximately 2007 to 2012, she worked as a Dock Clerk and then an Appointment  
7 Clerk. From 2012 to approximately November 2020, she worked in the job positions OS&D  
8 (Overages, Shortages & Damages) and Yard Check. Since about November 2020 to the present, she  
9 has worked as a Dispatch Clerk. She worked at the Defendants' Rialto, California location until  
10 approximately December 2020, and since that time he has worked at Defendants' Fontana, California  
11 location;

12 (e) Plaintiff Victor Gonzalez is a current employee of Defendants and has been  
13 employed by Defendants as a non-exempt employee working as a local pickup and delivery driver  
14 in California from approximately 2006 through the present. He worked at Defendants' Pico Rivera,  
15 LAX Terminal, California location until 2018 when he transferred to Fontana, where he currently  
16 works; and

17 (f) Plaintiff Andrew Tappin was employed by Defendants in approximately April  
18 2021 as a Non- Exempt Employee with the title of Dock Worker and worked during the liability  
19 period for Defendants until Plaintiff Tappin's separation from Defendants' employ in approximately  
20 September 2021.

26 6. Plaintiffs collectively allege a number of wage and hour violations by Defendant.  
22 First, they allege TForce of failing to pay all wages due, including minimum and overtime wages for  
23 hours worked off the clock and while subject to employer the control, including time spend donning  
24 and doffing uniforms and undergoing security checks, time spent working after having meal periods  
25 interrupted, and time deducted by TForce for a so-called "grace period" prior to the scheduled start  
26 of a shift even though the class members were clocked in for work, beginning their work duties, and  
27 under the control of Defendant. Next, Plaintiffs alleged TForce failed to provide timely and  
28 uninterrupted duty free meal and rest periods. Plaintiffs argued that, in addition to maintaining non-

compliant written meal and rest break policies, review of the time and payroll data provided by Defendant suggests significant de facto break violations for late, short, or missed meal breaks and further that second meal breaks were practically non-existent on shifts of 10+ hours. Plaintiffs also allege they were required to use their personal cell phones for work purposes without any reimbursement. Finally, Plaintiffs allege derivative violations for failing to provide accurate itemized wage statements and failing to timely pay wages upon separation of employment.

7. Based on these allegations, Plaintiffs filed several cases against TForce. On March 10, 2021, Plaintiff Donyeisha Mish filed a putative class action in Alameda County Superior Court entitled *Mish v. UPS Ground Freight, Inc.*, Case No. RG21091722. Defendant removed the *Mish* Class Action to the United States District Court for the Northern District of California, where it is currently pending under Case No. 3:21-cv-04094-EMC. Plaintiffs Darnell Lee, Luis Robles, and Xochtil Velasco later were added as party-plaintiffs and proposed class representatives. On July 14, 2021, Plaintiff Mish filed her putative representative action under PAGA in Alameda Superior Court in an action entitled *Mish v. UPS Ground Freight, Inc.*, Alameda Superior Court Case No. RG21105108. A true and correct copy of Plaintiff Mish's January 19, 2021 letter to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3(a) is attached hereto as Exhibit 2.

8. On November 21, 2021, Plaintiff Victor Gonzalez filed his putative class action in Riverside County Superior Court entitled *Gonzalez v. TForce Freight, Inc.*, Case No. CVRI2105223. The *Gonzalez* Class Action was subsequently removed, transferred, and consolidated with the *Mish* Class Action in the Northern District of California under Case No. 3:22-cv-01177. Also on November 21, 2021, Plaintiff Gonzalez filed his putative representative action under PAGA in Riverside Superior Court, in an action entitled *Gonzalez v. TForce Freight, Inc.*, Riverside County Superior Case No. CVRI2105225

9. On November 24, 2021, Plaintiff Andrew Tappin filed a putative class action in Sacramento Superior Court in an action entitled *Tappin v. TForce Freight, Inc.*, Case No. 34-2021-00311727. The *Tappin* Class Action was subsequently removed, transferred, and consolidated with the *Mish* Class Action in the Northern District of California under 2:22-cv-00322. On January 31,

2022, Plaintiff Tappin filed his putative representative action under PAGA in Sacramento Superior Court, in an action entitled *Tappin v. TForce Freight, Inc.*, Sacramento County Superior Court Case No. 34-2022-00314820. A true and correct copy of Plaintiff Tappin's November 24, 2021 letter to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3(a) is attached hereto as Exhibit 4.

10. TForce has at all times denied Plaintiffs' collective allegations and maintained its meal break and payroll policies and procedures comply with California law, that it provided its employees with required meal and rest breaks, that it properly tracked employee time and paid Plaintiffs and all other employees all wages due, and that any use of personal cell phones was for the employee convenience and not reimbursable as a necessary business expense. Additionally, Defendant strongly contends the case cannot be maintained as any kind of class or representative action, arguing that to the extent class members missed meal breaks, that such breaks were non-compliant, or that any unpaid "off the clock" work occurred, it was intermittent and infrequent, against company policy, and done without the company's knowledge. Thus, per TForce, evidence of such violations would be purely anecdotal and therefore individualized issues predominate and trial would be unmanageable.

11. Since Plaintiffs filed their complaints, the Parties engaged in formal discovery, both propounding and responding to written discovery, and Plaintiffs deposed six of TForce's managers. After agreeing to mediation, the Parties also undertook additional informal discovery to facilitate an exchange of information necessary to engage in a meaningful mediation. Consequently, Plaintiffs' counsel reviewed payroll records, personnel policies/handbooks, meal and rest break policies, personnel files, and a random sampling of paystubs and time records produced by TForce for about 20 % of the class. Defendant also provided documents and information reflecting the estimated total amount of workweeks and pay periods the class members worked, and average hourly pay rates, among other relevant data. Plaintiff had that data reviewed and analyzed by Berger Consulting Group to assist with determining potential break violation rates, amount of underpaid rest and recovery time and unproductive time, etc., and preparing a damages model.

12. The Parties then engaged Michael Young, Esq., a highly respected mediator with

1 extensive wage and hour class action experience and, in May 2022, participated in a full-day  
2 mediation with Mr. Young. Throughout the day, the arms-length negotiations were hard-fought and  
3 adversarial as the Parties exchanged extensive information on their legal and factual positions, and  
4 made numerous offers and counter-offers. The Parties were not able to reach a settlement at the  
5 mediation. Over the following several months, however, they continued to negotiate with Mr.  
6 Young's assistance, and he ultimately issued a mediator's proposal that was accepted by all Parties  
7 in December 2022. The Parties then collaboratively drafted the Stipulation of Class and PAGA  
8 Representative Action Settlement ("Settlement Agreement") setting forth the full and final settlement  
9 terms.

10 13. In order to fully effectuate the Parties' agreement to resolve all pending cases on a  
11 global basis and allow one court to preside over the approval process, they also agreed to stipulate  
12 to the filing of an amended complaint in the Tappin Action to assert both class and PAGA claims,  
13 and including the plaintiffs from all matters as proposed class representatives. On January 5, 2024,  
14 the Parties filed a stipulation~~mal~~ proposed order to allow the filing of the First Amended Complaint,  
15 along with a copy of the proposed First Amended Complaint.

16 **THE PROPOSED SETTLEMENT TERMS**

17 14. **Settlement Amount.** The settlement amount is the amount of 8,250,000.00) (the  
18 "Gross Settlement Amount" or "GSA"), to be paid by Defendant, and which is inclusive of attorneys'  
19 fees, costs, enhancement awards, claims administration expenses, and PAGA penalties to the State  
20 of California and Aggrieved Employees. The Gross Settlement Amount is an all-in common fund  
26 settlement.

22 15. **Funding of the Gross Settlement Amount.** Defendant will deposit the Gross  
23 Settlement Amount in one lump payment, plus all additional amounts required for employer-side  
24 payroll taxes, into a Qualified Settlement Account ("QSA") to be established by the Settlement  
25 Administrator.

26 16. **Non-reversionary.** There will be no reversion of any portion of the Gross Settlement  
27 Amount to Defendant.  
28

1           17.     **Class Representative Enhancement Payments.** Class Representative Enhancement  
2     Payments will not exceed \$10,000.00 for each Class Representative, for a total of \$60,000.00. The  
3     payment is for the service rendered in furtherance of class members' claims, for the risk undertaken  
4     for payment of costs in the event litigation was unsuccessful, for any stigma the Plaintiffs may suffer  
5     going forward due to the public information available via the internet for having filed a class action  
6     against an employer, and for their agreement to each provide a full release of claims as compared to  
7     the limited release required of class members.

8           18.     The Class Representatives in this case were not merely bystanders, but were actively  
9     involved in the litigation. They have assisted with the investigation of this case and were always  
10    available to consult with, and regularly did consult with, Class Counsel throughout the litigation.  
11    They devoted many hours to assisting Class Counsel with discovery responses, have searched for  
12    and provided responsive documents and electronically stored information. They have devoted  
13    significant time and effort to this litigation and advanced the interests of the class.

14          19.     **Attorneys' Fees and Costs.** Class Counsel will seek an award of Attorneys' Fees not  
15    to exceed one-third (1/3) of the Gross Settlement Amount, or \$2,750,000.00 in attorney's fees, and  
16    actual litigation costs and expenses not to exceed \$50,000. Any fees awarded will be split between  
17    counsel as follows: Makarem & Associates APLC – 71.25%; Blumenthal Nordrehaug - 21.25%, and  
18    James Hawkins 7.5%.

19          20.     **Settlement Administration Cost.** Subject to Court approval, the Parties agreed on  
20    CPT Group Inc. as the Settlement Administrator, CPT will be paid for the reasonable costs of  
26    administration of the Settlement and distribution of payments from the Gross Settlement Fund, which  
22    Settlement Administration Costs shall not exceed \$21,000.00.

23          21.     **Net Settlement Amount and Payout to Class and PAGA Members.** The Net  
24    Settlement Amount means the portion of the Gross Settlement Amount remaining after deducting  
25    the Class Representative Enhancement Payments, the PAGA Settlement, Attorney's Fees and Costs,  
26    and Settlement Administration Costs, from the Gross Settlement Fund. The entire Net Settlement  
27    Amount will be distributed to the Participating Class Members, defined below. The Net Settlement  
28    Amount is estimated to be approximately \$5,204,000.

1           22.     **Individual Settlement Payment Formula.** Payments to Participating Class  
2 Members will be determined by dividing the Net Settlement Amount by the total number of  
3 workweeks for all Class Members, and multiplying that value by the number of workweeks worked  
4 by each Class Member. There are an estimated 3,210 Class Members, meaning participating Class  
5 Members will receive approximately \$1,621 on average. These are current estimates, and the Parties  
6 will provide final numbers in connection with their motion for final approval of the settlement.

7           23.     **Estimated PAGA Payments.** \$165,000 of the Gross Settlement Amount will be  
8 allocated to the PAGA Payment. Of the PAGA Payment, 75%, or \$123,750.00, will be paid to the  
9 California Labor & Workforce Development Agency as the LWDA PAGA Payment, and 25%, or  
10 \$41,250,000, will be paid to the PAGA Members as their Individual PAGA Payments.

11           24.     **Proposed Settlement Class.** “Class Member(s)” or “Settlement Class” means all  
12 current and former California non-exempt employees of Defendant who have worked at least one  
13 Eligible Workweek during the Class Settlement Period of September 13, 2016, through the  
14 Preliminary Approval Date. There are an estimated 3,210 class members.

15           25.     **Class Member Release.** Under the terms of the proposed Settlement, Participating  
16 Class Members will release “all claims, rights, demands, liabilities, and causes of action, asserted in  
17 any of the complaints filed in the Action, and all claims that could have been asserted in the Action  
18 reasonably arising from the same alleged facts and theories in the complaints filed in the Action or  
19 the PAGA Actions, or alleged in the PAGA Notices sent by the Plaintiffs to the LWDA, under any  
20 federal, state and local laws or the IWC Wage Orders, including claims for (1) unpaid minimum  
26 wages; (2) unpaid overtime wages; (3) failure to provide meal periods; (4) failure to provide rest  
22 periods; (5) failure to provide accurate wage statements; (6) waiting time penalties; (7) failure to  
23 reimburse employees for required expenses; (8) violations of California Labor Code sections 201-  
24 204, 210, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 248.2, 510, 512, 558, 1174, 1174.5, 1194, 1197,  
25 1197.1, 1198, 2802 and 2804; (9) unfair competition based on the same Labor Code violations; (10)  
26 all claims for interest, penalties, attorneys’ fees, costs and any other monetary relief based upon the  
27 claims described above and including, but not limited to, pursuant to Labor Code §§ 210, 218.5,  
28 218.6, Code of Civil Procedure §1021.5, and/or Civil Code §§ 3287(b) and 3289, costs, attorneys’

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

10 26. **The PAGA Payment.** “PAGA Payment” means the amount of \$165,000.00 payable  
11 from the Gross Settlement Amount for civil penalties under PAGA, which includes the LWDA  
12 PAGA Payment and Individual PAGA Payments. Plaintiffs gave notice of the proposed settlement  
13 and the approval hearing to the LWDA via its online portal, and a true and correct copy of proof of  
14 submission is attached hereto as Exhibit 3.

15 27. **PAGA Members.** “PAGA Members” all current and former California non-exempt  
16 employees of Defendant who have worked at least one Eligible Pay Period during the PAGA  
17 Settlement Period of from May 10, 2020, through the Preliminary Approval Date.

18 28. **Individual PAGA Payments.** “Individual PAGA Payments” means the pro rata  
19 payments to the PAGA Members from the 25% of the PAGA Payment, or \$41,250.00, for their share  
20 of civil penalties paid under PAGA. There is no right to opt out of the PAGA component of the  
26 settlement, and Class Members who are also PAGA Members will receive an Individual PAGA  
22 Payment even if they opt out of the class component of the settlement.

23 29. **PAGA Member Release.** Under the terms of the proposed Settlement, PAGA  
24 Members will release “all claims for civil penalties under PAGA asserted in any of the complaints  
25 filed in the Action or PAGA Actions, and all claims that could have been asserted in the Action or  
26 PAGA Actions based on the same alleged facts and theories in the complaints or in the PAGA  
27 Notices sent by the Plaintiffs to the LWDA, including claims for penalties based on violations of the  
28 California Labor Code and IWC Wage Orders for (1) unpaid minimum wages; (2) unpaid overtime

1 wages; (3) unpaid meal period premiums; (4) unpaid rest period premiums; (5) inaccurate wage  
2 statements; (6) failure to keep accurate records; (7) failure to indemnify for all necessary business  
3 expenses; (8) failure to timely pay wages during employment or at termination; (9) failure to pay and  
4 accurately calculate all sick pay wages; (10) failure to provide and accurately calculate COVID-19  
5 supplemental sick pay; and (11) violations of California Labor Code sections 201-204, 210, 221,  
6 226, 226.2, 226.3, 226.7, 227.3, 246, 248.2, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198,  
7 2802 and 2804. The Released PAGA Claims do not include other PAGA claims, claims for wrongful  
8 termination, discrimination, unemployment insurance, disability and worker's compensation, and  
9 claims outside of the PAGA Period."

10       **30. Released Parties.** "Released Parties" means Defendant TForce Freight, Inc.  
11 (formerly known as UPS Ground Freight, Inc.) and any current or prior parent (including United  
12 Parcel Service, Inc.), subsidiary, affiliated or related entities (including any companies, corporations,  
13 partnerships, alter egos, joint venturers, and actual or alleged joint employers), and each of their  
14 respective past, present and future agents, employees, servants, officers, directors, partners,  
15 members, trustees, fiduciaries, representatives, shareholders, stockholders, attorneys, equity  
16 sponsors, divisions, assigns, predecessors, successors, insurers, and consultants.

17       **31. Notice Procedure.** The Parties have selected CPT Group, Inc. to serve as the  
18 Settlement Administrator, subject to Court approval. The Parties have agreed on the form of notice  
19 to be mailed to the Class and the method of notice to the class. *See* Exhibit 1 to the Settlement  
20 Agreement. CPT is qualified and has significant experience administering class action settlements,  
26 including numerous wage and hour matters. CPT has agreed to cap its fees and costs at \$21,000.00.  
22 To the extent the full approved amount is not used, the difference will remain in the Net Settlement  
23 Amount for distribution to the Participating Class Members.

24       **32. Settlement Notice Timeline.** Within 30 calendar days of Preliminary Approval,  
25 Defendant will provide the Class Data to the Settlement Administrator. Within 14 calendar days after  
26 receiving the Class Data from Defendant, the Settlement Administrator will mail a Class Notice to  
27 all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses  
28 identified in the Class Data. Requests for exclusion or objections must be postmarked within 45

1 calendar days from the initial mailing of the Class Notice, unless the 45th day falls on a Sunday or  
2 Federal holiday.

3       **33. Details Regarding Dissemination of Notice.** The Class Notice, in materially the  
4 form attached to the Settlement Agreement as Exhibit 1, and as approved by the Court, shall be sent  
5 by the Settlement Administrator to all Class Members via regular First-Class U.S. Mail, using the  
6 most current, known mailing addresses identified in the Class Data. Prior to mailing, the Settlement  
7 Administrator will perform a search based on the National Change of Address Database for  
8 information to update and correct for any known or identifiable address changes. Any Class Notices  
9 returned to the Settlement Administrator as non-deliverable on or before the Response Deadline will  
10 be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto and the  
11 Settlement Administrator will indicate the date of such re-mailing on the Class Notice. If such an  
12 address(es) is ascertained, the Settlement Administrator shall re-mail the Notice of Settlement within  
13 ten (10) calendar days. If alternative addresses are obtained for a Settlement Class Member, the  
14 Settlement Administrator shall send the Notice of Settlement to up to 2 alternative addresses.

15       **34. The Claims, Dispute, Opt-Out and Objection Process.** To participate in the  
16 settlement, a Class Member need not take any action.

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

27       **36.** Settlement Class Members who want to opt out must timely submit a signed and dated  
28 written request to be excluded from the class portion of the Settlement to the Settlement

1 Administrator (“Opt-Out Request”). The Opt-Out Request must be postmarked on or before the  
2 Response Deadline, include the case name and number, the Settlement Class Member’s name,  
3 address, and last four of their social security number, must be signed by the Settlement Class  
4 Member, and must reasonably communicate the Settlement Class Member’s election to be excluded  
5 from the class Settlement.

6 37. Participating Class Members may object to the Settlement in person at the Final  
7 Approval Hearing and/or in writing. Participating Class Members, except for the Class  
8 Representatives, will have until the Response Deadline to mail a written objection to the Settlement  
9 and a notice of intent to appear at the Final Approval Hearing, which must be mailed to the Settlement  
10 Administrator. The written objection should state the Participating Class Member’s name and  
11 address and describe the reason(s) why the Participating Class Member objects to the Settlement and  
12 include or attach any documents upon which the objection is based. Alternatively, any Class Member  
13 may appear at the Final Approval Hearing, personally or through their own counsel, in order to have  
14 their objections heard by the Court, regardless of whether such Class Member submits a written  
15 Objection. Only those Class Members who do not submit a Request for Exclusion may object to the  
16 Settlement. If a Settlement Class Member submits both an Opt-Out Request and an Objection within  
17 the Response Deadline, then the Opt-Out Request will be deemed valid and the Objection invalid  
18 and the individual will not be deemed a Participating Class Member.

19 **CONDITIONAL CLASS CERTIFICATION**

20 38. Conditional certification is proper since this matter satisfies all requirements for class  
26 certification under Code of Civil Procedure section 382. First, the class is both sufficiently numerous,  
22 consisting of approximately 3,210 individuals, and ascertainable by reference to Defendant’s  
23 personnel and payroll records.

24 39. Plaintiffs all are adequate class representatives, as their claims do not conflict with  
25 and are not antagonistic to the claims of other class members. Further, their claims are typical given  
26 each is a member of the class and their respective claims arise from the same employment practices  
27 and course of conduct giving rise to the claims of the other class members.  
28

1           40. Common questions of law and fact predominate – particularly for purposes of a  
2 settlement class – as the Class Members all were subject to the same meal rest break policies, the  
3 same alleged policy that shorted them on hours worked. Since the focus of the claims against TForce  
4 concerns the legality of common policies applied uniformly to the entire class, common issues  
5 predominate over individualized inquiries concerning liability. TForce’s de facto policy of not  
6 compensating for time spent donning and doffing, or undergoing security checks, is company-wide  
7 policy applied equally and consistently to all class members, and this policy is either compliant with  
8 California law or it is not. Regardless of that determination, it will decide liability for all class  
9 members one way or another. Similarly, whether TForce properly paid for rest and recovery time  
10 present another common issue.

11           41. Resolving this matter as a class action is superior to other available means for the fair  
12 and efficient adjudication of this controversy for multiple reasons, including inter alia: (a) individual  
13 joinder of all members of the class is impractical, (b) class action treatment will permit a large number  
14 of similarly situated persons to resolve their common claims in a single forum simultaneously,  
15 efficiently, and without unnecessary duplication of effort and expense; and (c) the damages suffered  
16 by many of the individual class members are relatively small and the expenses and burden of  
17 individual litigation would make it difficult or impossible for them to seek redress on their own.

18 **THE STRENGTH OF PLAINTIFFS’ CASE AND COMPLEXITIES OF FURTHER**  
19 **LITIGATION**

20           42. Plaintiffs believe that the Class Members’ and PAGA Members’ claims in this case  
26 are legally meritorious and present a reasonable probability of a favorable determination on behalf  
22 of the class. At the same time, there is undeniably significant litigation risk avoided by the proposed  
23 Settlement, including multiple pending dispositive motions, the risk of decertification of the class,  
24 risks of losing at trial, and risks associated with potential appeals.

25           43. Liability remains hotly contested by Defendant, which denies that it engaged in any  
26 violations of the law, and further denies any liability or engagement in wrongdoing of any kind  
27 associated with the claims alleged in any of the Actions by the Class Representatives or any Class  
28 Member or PAGA Member. Defendant contends that at all times it complied with all wage and hour

laws in connection with the employment and/or retention of services of Plaintiffs and the Class Members and PAGA Members.

44. Plaintiffs' counsel understood and appreciated the defenses and position of Defendant but believed that Plaintiffs would ultimately succeed in this litigation. In light of the strongly divergent views, the Parties were able to negotiate a fair settlement, considering the costs and risks of continued litigation and multiple potential trials. The Parties negotiations were at all times conducted professionally and at arm's length, and were hard fought over the course of a full-day mediation and months of follow up negotiations that ultimately led to an accepted mediator's proposal in December 2022. The Parties believe the Settlement to be in their respective best interests, and in the best interests of the Class Members.

45. The Parties have also considered the uncertainty and risk of the outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiffs are also aware of the burdens of proof necessary to establish liability for the claims asserted in the Actions, the defenses thereto, and the potential difficulties in establishing damages.

46. Here, while Plaintiffs have calculated Defendant's maximum potential liability to Class Members to be in excess of the settlement amount, Plaintiffs' valuation assumed that Plaintiffs would secure and maintain class certification through trial, prevail in establishing liability at trial, are awarded the full amount of damages and penalties, and that a resulting judgment survives on appeal.

47. Prior to mediation, the parties engaged in extensive formal and informal discovery to facilitate settlement discussions, including depositions multiple TForce managerial personnel. As a result, Plaintiffs reviewed documents and information regarding TForce's payroll practices, pay stubs and time records for a sampling of class members, meal and rest break policies, etc., and information from Defendant regarding class size and breakdown of job positions, work weeks, rates of pay, and other information used to formulate a damages model. This extensive information then was analyzed by a consulting expert to look for meal and rest break violation rates, time spent working off the clock due to donning/doffing, security checks, etc., and other issues relevant to liability and damages. Plaintiffs' counsel are confident they obtained sufficient information to enable them to understand the

1 law and facts of this case and make an informed decision regarding the proposed settlement and  
2 whether it is in the best interests of the class.

3 48. Using that data, Plaintiffs ran various calculations and estimated TForce's likely  
4 maximum exposure on the class claims at approximately \$79.26 million, including \$10.1 million on  
5 the off-the-clock unpaid minimum wage and overtime claims, \$28 million on the meal break claims,  
6 \$36.1 million on the rest break claims, \$8.82 million on the wage statement claims, \$13.71 million  
7 on the waiting time penalty claims, and \$1.91 million on the unreimbursed expenses claims.  
8 Plaintiff's counsel ultimately discounted the value of these claims, however, in light of the multiple  
9 and considerable risks posed by proceeding with the litigation, as Defendant raised numerous  
10 defenses and vigorously defended against these claims. Below Plaintiffs detail the issues that  
11 necessitated deductions from the maximum potential value of this case to arrive at the amount of the  
12 Parties' settlement

13 49. The unpaid wage claims focus primarily on TForce's alleged failure to pay Class  
14 Members at least minimum wages and/ or overtime wages for all of their hours worked. First,  
15 Plaintiffs' allege a policy requiring them to go through a lengthy donning/doffing process with their  
16 work uniforms, and also undergoing a security checkpoint process when entering and leaving the  
17 work facility. Per Plaintiffs, TForce required Class Members to go through the donning and doffing  
18 process and security checkpoint *before* clocking in at the beginning of their shifts, and *after* clocking  
19 out for payroll purposes at the end of their shifts, which could take 15-20 minutes each shift. Next,  
20 Plaintiffs allege they were continually subjected to underpayments for "Unpaid Time" where the  
26 analysis of the payroll data indicates that if an employee clocked in to begin work duties prior to the  
22 scheduled start of a shifts, Defendant would deduct that time from the class members' pay for the  
23 time that they were clocked in prior to the scheduled beginning of their shifts. This unpaid time, listed  
24 as a "Grace Before Time" entry on the wage statements, was deducted despite the class members  
25 being clocked in for work, beginning their work duties, and under the control of Defendant and  
26 resulted in an average underpayment of 2.7 minutes per shift.

27 50. In response, TForce argued its payroll policies are fully compliant, that it properly  
28 tracked and paid for all hours worked at the appropriate hourly wage. Defendant also argued that, if

any class members failed to record and report time it was in violation of company policy and would have occurred on a haphazard and individual basis. For example, in an employee clocked in a few minutes early it would be difficult to determine, on a shift by shift basis, if that employee was actually working versus undertaking some other personal activity such as talking on phone, getting coffee, etc. Accordingly Defendant argued the issue would not be certifiable since it would require individualized inquiries whether any compensable “off the clock” work occurred and why it was or was not documented and paid for. Defendant also emphasized using a “grace period” and time rounding is permissible under California law so long it has an overall neutral effect on employee time and compensation.

51. On the meal and rest break claims, Plaintiff contends TForce’s written policies are not fully compliant, and Plaintiffs’ review of the time and payroll records provided suggested these deficiencies in the written policies affected employee breaks. Based on Plaintiffs’ analyses, Plaintiffs and the class members were consistently required to work in excess of four (4) hours (or major fraction thereof) without receiving lawful ten (10) minute rest periods. Even when they were provided an opportunity to take such a break within each four hour period, they were consistently denied compliant rest periods because such rest periods were interrupted and/or cut short by management and other employees requiring assistance, and management would insist the work be done immediately rather than after the rest period or they would be required to perform more work than could possibly performed in their allotted time order to take such breaks.

52. In response, TForce argued its written policies are fully compliant, that it provided employees with the opportunity to receive all required breaks, and that many class members waived their second meal periods. Defendant further maintained that, in light of its compliant policies, whether a class member missed a meal period, received a late meal period, or missed a rest break would have been aberrational and against company policy. Thus, per TForce, these issues are not amenable to class or representative treatment since their resolution would require individualized inquiries as to why a break was missed or non-compliant.

53. On the expense reimbursement claim, Plaintiffs allege that throughout their employment, they and the class members were required to use their personal cell phones in order to

1 communicate with supervisors and other employees during work hours. The aggrieved employees  
2 would not have been able to successfully accomplish their duties without incurring these business  
3 expenses. However, Defendants did not reimburse Plaintiffs and the class members for this expense.  
4 On the other hand, Defendant argued there would be no conceivable need for employees to use their  
5 phones for work and that any use of employee phones was purely for personal convenience and  
6 therefore not reimbursable.

7 54. The claims under Labor Code sections 203 and 226 are derivative of the primary  
8 unpaid wage claims, and accordingly are subject to the same risks and uncertainties plus additional  
9 risks posed by the need to take into account the discretionary nature of such awards and the “good  
10 faith” and other defenses available to Defendant. Thus, while these claims largely are derivative of  
11 the unpaid wage claim, they also are subject to additional defenses.

12 55. As far as potential PAGA liability, the allegedly aggrieved employees theoretically  
13 are entitled to penalties totaling about \$157 million in civil penalties should Plaintiffs prevail on all  
14 claims and establish violations of the multiple Labor Code sections at issue. As with the class claims,  
15 Plaintiffs discounted the potential PAGA penalties based on Defendant’s various defenses on the  
16 merits and also accounted for the Court’s wide discretion to reduce such penalties, or to decline to  
17 award penalties at all. Accordingly, the Parties allocated \$165,000 to PAGA penalties, and Plaintiffs  
18 submit this amount is reasonable under the circumstances and in line with comparable settlements in  
19 other wage and hour class actions in California. Additionally, the LWDA has been informed of the  
20 terms of the PAGA portion of the settlement, and will be able to weigh in as necessary.

26 56. Thus, in agreeing to the Settlement, Plaintiffs and their counsel considered risks  
22 including: Defendant’s numerous defenses to Plaintiffs’ claims; the uncertain and changing state of  
23 California wage and hour law; the risk of the decertification of the classes in the Fodera Action; risks  
24 associated with Defendant’s pending motion for summary judgment in the Fodera Action; the risks  
25 associated with Defendant’s pending motion for summary adjudication in the Porter Action; the risks  
26 associated with trial; the risks associated with a likely appeal after trial; and the substantial discretion  
27 Courts have exercised in awarding (and reducing) Labor Code penalties. Additionally, Plaintiffs  
28 weighed the unique risks resulting from the fact that there will be two trials, one in the Porter Action

1 and one in the Fodera Action, so Plaintiffs must prevail at trial (and any eventual appeal) not once,  
2 but twice, in order to obtain the maximum theoretical recovery.

3 57. Each of the foregoing concerns weighed into Plaintiffs' analysis to eventually agree  
4 to a settlement that is less than Defendant's total theoretical liability, assuming Plaintiffs defeated the  
5 dispositive motions, maintained class certification, won every aspect of the case at the two separate  
6 upcoming trials, and prevailed on appeal. A settlement now guarantees that Class Members and  
7 PAGA Members will obtain a recovery, and that they will receive it in a reasonable time frame.

8 58. The settlement amount was a negotiated compromise, factoring in all of the risks  
9 described above. Taking into account all of the circumstances of these matters, and the significant  
10 factual and legal defenses raised by Defendant against liability and damages, Class Counsel believe  
11 that the settlement is fair and reasonable. Each Class Member's individual share of the settlement  
12 amount is tailored to the number of shifts worked by each Class Member during the class period, so  
13 the distribution is weighted in favor of those Class Members who were potentially most affected by  
14 the alleged violations. Similarly, each PAGA Member's individual share of the PAGA Payment is  
15 tailored to the number of pay periods worked by the PAGA Member during the PAGA Period.  
16 Finally, because of the number of Class Members, it is unlikely that the potential monetary claims of  
17 individual Class Members would have been viable without the class action mechanism. Similarly, it  
18 is unlikely that the claims of individual PAGA Members would have been viable absent the PAGA  
19 mechanism.

## 20 **MAKAREM & ASSOCIATES' QUALIFICATIONS**

26 59. I graduated cum laude from the University of Georgia with a B.B.A. in finance in  
22 2001. In 2004 I graduated from the University of Chicago Law School, where I received the Edmund  
23 A. Spencer Scholarship. From 2006 to 2007 I served as a law clerk to the Honorable Stanley F. Birch,  
24 Jr. of the United States Court of Appeals for the Eleventh Circuit. I was selected as a Southern  
25 California Super Lawyer in employment law in 2022, 2023, and 2024. I am also an active member of  
26 the California Employment Lawyers Association (CELA), Consumer Attorneys Association of Los  
27 Angeles (CAALA), Consumer Attorneys of California (CAOC) and I have published in The  
28 Advocate, the magazine of the Consumer Attorneys Association of Los Angeles.

1           60. My practice focuses on representing consumers and employees, and a substantial  
2 portion of my practice is devoted to wage and hour class actions and representative actions. I am  
3 currently the primary attorney in charge of litigating several wage and hour class actions and  
4 California Private Attorneys General Act (“PAGA”) cases in state and federal court. Earlier in my  
5 career I practiced with several national law firms, including Latham & Watkins LLP and Schiff  
6 Hardin LLP, where I practiced complex litigation including class actions.

7           61. Makarem & Associates has litigated numerous complex business matters, including  
8 wage and hour class actions, PAGA actions, and employment cases. We are a six-attorney law firm  
9 in West Los Angeles. The firm practices in the area of wage and hour law, employment litigation,  
10 and complex business litigation. The firm’s founding partner, Ron Makarem, was named a Top 20  
11 Attorney under the Age of 40, in California, by the Daily Journal in 2007, and a California  
12 SuperLawyer from 2010 to the present. He was awarded "Top 100 Attorney" in Southern California  
13 by Los Angeles Magazine and Super Lawyers for 2013 and 2019. In 2012, he received the CLAY  
14 award for ‘Attorney of the Year’ by California Lawyer Magazine for his work on a landmark  
15 California Supreme Court case. Mr. Makarem is a certified legal malpractice specialist by the  
16 California State Bar. In 2015, he received the AALASC Trailblazer Award which recognizes  
17 attorneys who demonstrate vision, courage and tenacity in their practice

18           62. Over the past nine years, Makarem & Associates has engaged in all aspects of class  
19 action litigation, including having interviewed potential class action representatives to determine the  
20 potential merits of their allegations, conducted pre-litigation investigation, including interview,  
26 research and analysis, drafted class action complaints, drafted class action discovery and responses  
22 thereto, conducted and defended depositions, drafted, opposed and orally argued numerous class  
23 action law and motion pleadings (including oppositions to removal, oppositions to demurrer,  
24 oppositions to motions to dismiss, oppositions to motions to exclude expert testimony, oppositions to  
25 motions to strike, motions to compel, oppositions to motions to compel, class certification motions,  
26 oppositions to motions to decertify, and preliminary and final approval motions), conducted class  
27 member interviews, legal research, settlement negotiations and meetings with defense counsel,  
28

1 statistical analysis of potential damages, and attended numerous mediation sessions for purposes of  
2 negotiating class action settlements.

3 63. Makarem & Associates presently has in excess of 30 wage and hour class actions  
4 pending in various stages of the litigation process, from pre-litigation investigation to final approval  
5 pending. In the past 2 years, the firm has been appointed as class counsel after certifying classes on  
6 contested motions in multiple matters, including *Fodera v. Equinox Holdings, Inc.*, 341 F.R.D. 616  
7 (N.D. Cal. May 24, 2022).

8 64. Makarem & Associates is well qualified because of our experience, knowledge, and  
9 resources to act as counsel and represent Plaintiff and the putative class in this action. A substantial  
10 percentage of our practice is devoted to litigating wage, hour, and working-conditions violations, and  
11 the bulk of these cases are class actions.

12 65. This experience is helpful in assessing the reasonableness of settlements such as the  
13 one at issue here, and from this experience Class Counsel concluded that this lawsuit could not have  
14 been settled on better terms than provided under the present settlement agreement.

15 66. In sum, Class Counsel is experienced in employment class action litigation, and is  
16 adequate to represent the putative class in the instant action.

#### 17 **REQUEST FOR ATTORNEY'S FEES**

18 67. The settlement calls for the payment of up to one third of the Gross Settlement Fund  
19 as attorneys' fees. This request is fair, reasonable, and adequate to compensate Class Counsel for the  
20 substantial work they have put into this case and, moreover, the risk they assumed by taking it in the  
26 first place. The attorneys' fees award is intended to reimburse Class Counsel for all uncompensated  
22 work that they have already done and for all the work they will continue to do in carrying out and  
23 overseeing the notification to class members, communicating with class members regarding their  
24 claims, and assisting in the administration of the settlement if it is preliminarily approved.

25 68. Our firm took this case on a contingent-fee basis against a business represented by a  
26 reputable defense firm. Plaintiff signed a contingency-fee agreement stating that Class Counsel could  
27 receive a fee of up to 40% of the overall recovery. When we take contingent cases, we must pay  
28 careful attention to the economics involved or one bad case can destroy years of work. Accordingly,

1 when we take contingency cases, we anticipate that we shall, if successful, receive a fee that exceeds  
2 our normal hourly rate; otherwise, the risk is often too great to bear. Even when we work long hours,  
3 the number of hours in a day is limited. Because of this, when we take on one particular matter, we  
4 are unable to take on other matters. When Class Counsel became involved in this case, we realized  
5 the time commitment that it would entail and we were forced to turn down matters that we otherwise  
6 should have been able to handle. In sum, this case claimed a significant portion of Class Counsel's  
7 time and attention throughout its pendency.

8 69. In this case, our firm has incurred substantial attorney's fees conducting pre-filing  
9 investigation, analyzing the claims, conducting legal research, reviewing records and speaking with  
10 class members, preparing pleadings, participating in a full-day mediation and extensive follow up  
11 negotiations, negotiating the class and PAGA settlements, preparing the long-form settlement  
12 agreement, preparing this motion for preliminary approval, and otherwise litigating the case.

13 70. The requested fee is reasonable for the services provided to class members and for  
14 the benefits they are to receive. Indeed, even with a modest multiplier under the lodestar theory, see  
15 *Bihun v. AT&T Information System* (1993) 13 Cal.App.4th 976, 997 (disapproved in part on other  
16 grounds), Class Counsel's fees would still be justified. Class Counsel will more fully brief the Court  
17 on its lodestar in the motion for final approval.

18 71. For the foregoing reasons, it is respectfully requested that the Court preliminarily  
19 approve the settlement.

20  
21  
22  
23 I declare under penalty of perjury under the laws of the State of California that the foregoing  
24 is true and correct. Executed this 29th day of May, 2024, at Los Angeles, California.

25  
26 

27  
28 \_\_\_\_\_  
Samuel D. Almon

## EXHIBIT 1

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6 Attorneys for Defendant  
7 TFORCE FREIGHT, INC.  
(f/k/a UPS GROUND FREIGHT, INC.)

8 *[Additional counsel on next page]*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF SACRAMENTO**

11 Case No. 34-2022-00314820

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

16 Plaintiffs,

17 v.

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

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

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

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25 Attorneys for Plaintiffs DONYEISHA MISH,  
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26 VELASCO, VICTOR GONZALEZ, and ANDREW D. TAPPIN  
27  
28

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

7 **1. DEFINITIONS**

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

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

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

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

26 1.5 “Class Representatives” or “Plaintiffs” means Plaintiffs Donyeisha Mish, Darnell  
27 Lee, Luis Robles, Xochitl Velasco, Victor Gonzalez, and Andrew Tappin.  
28

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

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

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

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

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

20 1.10 "Eligible Workweeks" shall mean the workweeks that each Settlement Class  
21 Member worked for Defendant in California during the Class Settlement Period, excluding any  
22 Settlement Class Member's workweeks covered by a prior release, or in one instance a dismissal  
23 with prejudice, of the Released Class Claims in the matters of *Robert Amaya v. United Parcel*  
24 *Service, Inc. et al.*, Los Angeles Superior Court Case No. BC617526, *Lawrence Abeyta et al. v.*  
25 *United Parcel Service, Inc. et al.*, San Bernardino Superior Court Case No. CIVDS1617272, *Jose*  
26 *Alfaro v. United Parcel Service, Inc. et al.*, Los Angeles Superior Court Case No. BC676920,  
27 *Patrick Bruins v. United Parcel Service, Inc. et al.*, Ventura County Superior Court Case No. 56-  
28

1 2018-00510065-CU-OE-VTA, and *Michael Babb v. United Parcel Service, Inc. et al.*, San  
2 Bernardino Superior Court Case No. CIVDS1831252.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **2. RECITALS**

### **2.1 Background and Procedural History**

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

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

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

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

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

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

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

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

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

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

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

## 16 2.2 **Benefits of Settlement**

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

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

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

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

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

### 24 3. SETTLEMENT TERMS

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

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

### 3 3.2 Gross Settlement Amount

4 3.2.1 Gross Settlement Amount: Defendant shall pay a non-reversionary amount  
5 in the amount of Eight Million, Two Hundred and Fifty Thousand Dollars and Zero Cents  
6 (\$8,250,000) as the Gross Settlement Amount to resolve the Action and the PAGA Actions on a  
7 class and representative basis, subject to section 3.2.2. The Gross Settlement Amount shall be used  
8 to pay, as approved by the Court, Class Counsel's attorneys' fees and costs, Enhancement Awards  
9 to Class Representatives, Settlement Administration Costs, the PAGA Payment to the LWDA and  
10 the PAGA Members, and the Individual Settlement Payments to the Participating Class Members.  
11 To eliminate doubt, the Gross Settlement Amount is an "all in" payment, and Defendant shall not  
12 be obligated to pay any additional amount. Notwithstanding the foregoing, in addition to the Gross  
13 Settlement Amount, Defendant will pay the employer's portion of payroll taxes, including FICA  
14 and FUTA, on the portion of each Individual Settlement Payment allocated as unpaid wages.

15 3.2.2 Escalation of Gross Settlement Amount or Truncation of Class Settlement  
16 Period: In connection with mediation, Defendant identified 423,311 estimated Eligible Workweeks  
17 projected through April 14, 2023, At Defendant's option, if the Eligible Workweeks exceed  
18 465,642 (423,311 plus 10%) it can either (1) pay a pro rata amount for those Eligible Workweeks  
19 above the 10%; or (2) the Class Settlement Period and PAGA Settlement Period shall end as of the  
20 date the actual number of Eligible Workweeks reaches 465,642.

### 21 3.3 Allocation of Gross Settlement Amount

22 3.3.1 Class Representative Enhancement Awards: The Class Representatives'  
23 Enhancement Awards, which are in addition to each Class Representative's Individual Settlement  
24 Payment from the Net Settlement Amount and Individual PAGA Payment as PAGA Members,  
25 will, subject to Court approval, be paid out of the Gross Settlement Amount and will not exceed  
26 \$10,000, less taxes and withholdings, for the Class Representatives' services and assistance to the  
27 Class. Defendant will not oppose Plaintiffs' request for Class Representative Service Payments  
28

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

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

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

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

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

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

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

### 8 3.4 Taxation

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

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

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

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

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

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

### 3.6 Releases

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

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**

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

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

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

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

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

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

#### 4. APPROVAL OF SETTLEMENT, NOTICE TO CLASS AND ADMINISTRATION

##### 4.1 Preliminary Approval

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

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

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

##### 4.2 Notice

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

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

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

#### 14 4.3 **Opt-Out Requests**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 19 5. **MISCELLANEOUS PROVISIONS**

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

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

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

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

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

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

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

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

3 **To the Class Counsel:**

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

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

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

24 **To Defendant:**

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

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

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

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

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

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

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

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

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

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

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

**5.15 Stay of Litigation.** The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement.

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

**AGREED AND UNDERSTOOD.**

DATED: \_\_\_\_\_, 2023  
Donyeisha Mish

DATED: \_\_\_\_\_, 2023  
Darnell Lee

DATED: \_\_\_\_\_, 2023  
Luis Robles

DATED: \_\_\_\_\_, 2023  
Xochitl Velasco

DATED: \_\_\_\_\_, 2023  
Victor Gonzalez

the Court for purposes of implementing and enforcing the Settlement embodied in the Stipulation.  
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**AGREED AND UNDERSTOOD.**

DATED: 03 / 19 / 2024, 2023

  
\_\_\_\_\_  
Donyeisha Mish

DATED: 03 / 19 / 2024, 2023

  
\_\_\_\_\_  
Darnell Lee

DATED: 03 / 20 / 2024, 2023

  
\_\_\_\_\_  
Luis Robles

DATED: 03 / 19 / 2024, 2023

*Xochitl R Velasco*  
\_\_\_\_\_  
Xochitl Velasco

DATED: \_\_\_\_\_, 2023

\_\_\_\_\_  
Victor Gonzalez

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10 their duly authorized attorneys, as of the day and year herein set forth.

11 **AGREED AND UNDERSTOOD.**

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13  
14 DATED: \_\_\_\_\_, 2023 \_\_\_\_\_  
15 Donyeisha Mish

16  
17 DATED: \_\_\_\_\_, 2023 \_\_\_\_\_  
18 Darnell Lee

19  
20 DATED: \_\_\_\_\_, 2023 \_\_\_\_\_  
21 Luis Robles

22  
23 DATED: \_\_\_\_\_, 2023 \_\_\_\_\_  
24 Xochitl Velasco

25 Mar 13, 2024   
26 DATED: \_\_\_\_\_, 2023 [Victor Gonzalez \(Mar 13, 2024 11:36 PDT\)](#)  
27 Victor Gonzalez  
28

1 DATED: \_\_\_\_\_, 2023

Andrew D. Tappin

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

4 DATED: \_\_\_\_\_, 2023

By: \_\_\_\_\_

Its: \_\_\_\_\_

7 **APPROVED AS TO FORM:**

MAKAREM & ASSOCIATES, APLC

9 Dated: \_\_\_\_\_

By: \_\_\_\_\_

Ronald W. Makarem

Samuel Almon

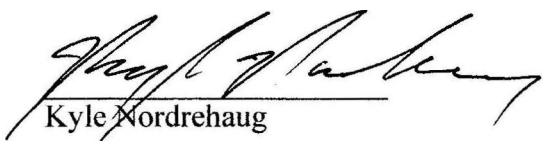
Daniel J. Bass

Counsel for Plaintiffs

13 Dated: March 20, 2024

BLUMENTHAL NORDREHAUG BHOWMIK DE  
14 BLOUW LLP

15 By: \_\_\_\_\_

  
16 Kyle Nordrehaug

18 Dated: \_\_\_\_\_

JAMES HAWKINS APLC

20 By: \_\_\_\_\_

James R. Hawkins, Esq.

Gregory Mauro, Esq.

22 Michael Calvo, Esq.

Jeanne Sarmiento, Esq.

24 MORGAN, LEWIS & BOCKIUS LLP

25 Dated: \_\_\_\_\_

By: \_\_\_\_\_

Brian D. Berry

Sarah Zenewicz

27 J.P. Schreiber

Ashlee Cherry

Attorneys for Defendant

1 DATED: \_\_\_\_\_, 2023

\_\_\_\_\_  
Andrew D. Tappin

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

4 DATED: \_\_\_\_\_, 2023

By: \_\_\_\_\_

Its: \_\_\_\_\_

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7 **APPROVED AS TO FORM:**

MAKAREM & ASSOCIATES, APLC

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9 Dated: 03 / 20 / 2024

By: \_\_\_\_\_

Ronald W. Makarem

Samuel Almon

Daniel J. Bass

Counsel for Plaintiffs

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11  
12  
13 Dated: \_\_\_\_\_

BLUMENTHAL NORDREHAUG BHOWMIK DE  
BLOUW LLP

By: \_\_\_\_\_

Norman B. Blumenthal

Kyle R. Nordrehaug

Aprajit Bhowmik

Nicholas J. De Blouw

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19 Dated: \_\_\_\_\_

JAMES HAWKINS APLC

By: \_\_\_\_\_

James R. Hawkins, Esq.

Gregory Mauro, Esq.

Michael Calvo, Esq.

Jeanne Sarmiento, Esq.

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24 MORGAN, LEWIS & BOCKIUS LLP

25 Dated: \_\_\_\_\_

By: \_\_\_\_\_

Brian D. Berry

Sarah Zenewicz

J.P. Schreiber

Ashlee Cherry

Attorneys for Defendant

1 DATED: 3/12/2024, 2023

DocuSigned by:  
Andrew Tappin  
Anc 48C50C89C2774E9...

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

4 DATED: \_\_\_\_\_, 2023

By: \_\_\_\_\_

Its: \_\_\_\_\_

6  
7 **APPROVED AS TO FORM:**

MAKAREM & ASSOCIATES, APLC

8  
9 Dated: \_\_\_\_\_

By: \_\_\_\_\_

Ronald W. Makarem

Samuel Almon

Daniel J. Bass

Counsel for Plaintiffs

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11  
12  
13 Dated: \_\_\_\_\_

BLUMENTHAL NORDREHAUG BHOWMIK DE  
BLOUW LLP

14  
15 By: \_\_\_\_\_

Norman B. Blumenthal

Kyle R. Nordrehaug

Aprajit Bhowmik

Nicholas J. De Blouw

16  
17  
18  
19 Dated: 3/12/24

JAMES HAWKINS APLC

20 By:  \_\_\_\_\_

James R. Hawkins, Esq.

Gregory Mauro, Esq.

Michael Calvo, Esq.

Jeanne Sarmiento, Esq.

21  
22  
23  
24 MORGAN, LEWIS & BOCKIUS LLP

25 Dated: \_\_\_\_\_

26 By: \_\_\_\_\_

Brian D. Berry

Sarah Zenewicz

J.P. Schreiber

Ashlee Cherry

Attorneys for Defendant

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DATED: \_\_\_\_\_, 2023

Andrew D. Tappin

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

By: W. J. K. Hill

DATED: \_\_\_\_\_, 2023

Its: President

**APPROVED AS TO FORM:**

MAKAREM & ASSOCIATES, APLC

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Ronald W. Makarem

Samuel Almon

Daniel J. Bass

Counsel for Plaintiffs

Dated: March 20, 2024

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: Kyle Nordrehaug

Dated: \_\_\_\_\_

JAMES HAWKINS APLC

By: \_\_\_\_\_

James R. Hawkins, Esq.

Gregory Mauro, Esq.

Michael Calvo, Esq.

Jeanne Sarmiento, Esq.

MORGAN, LEWIS & BOCKIUS LLP

Dated: April 5, 2024

By: Brian D. Berry

Sarah Zenewicz

J.P. Schreiber

Ashlee Cherry

Attorneys for Defendant

## Exhibit 1

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

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

Superior Court of the State of California, County of Sacramento

Case No. 34-2022-00314820

***The Superior Court for the State of California authorized this Notice. Read it carefully!  
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

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

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

[CLASS MEMBER NAME] [ID/CONTROL NUMBER]

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

Based on Defendant's records, and the Parties' current assumptions, your Individual Class Payment (less withholdings) and your Individual PAGA Payment are shown in the chart above, along with the Eligible Workweeks and Eligible Pay Periods you are credited with working during the Class Settlement Period and PAGA Settlement Period, respectively, according to Defendant's records. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendant's records you are not eligible for an Individual PAGA Payment under the Settlement because you didn't work during the PAGA Settlement Period.) If you believe you worked more Eligible Workweeks or Eligible Pay Periods during either of the relevant periods, you can submit a challenge by the deadline. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs' attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Settlement Class Members to give up their rights to assert certain claims against Defendant.

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

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

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

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

| YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT IT'S NOT REQUIRED |                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>DATE:</b><br><br><b>TIME:</b><br>A.M. / P.M.                  | At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice. |

## 1. WHAT IS THE ACTION ABOUT?

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

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

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

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

So far, the Court has made no determination whether Defendant or Plaintiffs are correct on the merits. In the meantime, Plaintiffs and Defendant hired an experienced, neutral mediator in an effort to resolve the Action by negotiating to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were

successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiffs and Defendant have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

### **3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?**

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

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

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

Although Plaintiffs and Defendant have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Settlement Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller’s Unclaimed Property Fund in your name.

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

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than the Response Deadline, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the Response Deadline. The Request for Exclusion should be a letter from a Settlement Class Member or his/her representative setting forth the Settlement Class Member’s name, present address, telephone number, and a simple statement requesting exclusion from the Settlement. Excluded Settlement Class Members (i.e., Non-Participating Class Members) will not receive Individual Settlement Payments, but will preserve their rights to personally pursue wage and hour claims against Defendant.

You cannot opt-out of the PAGA portion of the Settlement. Settlement Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendant based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Settlement Class Members will not release any claims against Defendant.
8. Administrator. The Court has appointed a neutral company, CPT Group, Inc. (the “Administrator”) to send this Notice, calculate and make payments, and process Settlement Class Members’ Requests for Exclusion. The Administrator will also decide Settlement Class Member challenges over Eligible Workweeks and Eligible Pay Periods worked, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
9. Participating Class Members’ Release. After the Judgment is final and Defendant has fully funded the entire Gross Settlement, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or related entities for wages based on the facts alleged in the Action for the duration of the Class Settlement Period and PAGA Settlement Period, which are resolved by this Settlement.

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

Payments, Participating Class Members will be deemed to release all claims under the FLSA that could have been asserted based on the alleged facts and theories alleged in any of the complaints. Except as expressly set forth in the Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Settlement Period.

10. PAGA Members' PAGA Release. After the Court's judgment is final, and Defendant has paid the entire Gross Settlement, all PAGA Members will be barred from asserting PAGA claims against Defendant, whether or not they exclude themselves from the Settlement. This means that all PAGA Members, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendant or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

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

#### **4. HOW WILL MY SETTLEMENT PAYMENT BE CALCULATED??**

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

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

3. Workweeks Worked and Pay Period Challenges. The number of Eligible Workweeks you worked during the Class Settlement Period and the number of Eligible Pay Periods you worked during the PAGA Settlement Period, as recorded in Defendant's records, are stated in the first page of this Notice. You have until **INSERT DATE** ("Response Deadline") to challenge the number of Eligible Workweeks or Eligible Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of Eligible Workweeks and Eligible Pay Periods based on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve all challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendant's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

## **5. HOW WILL I GET PAID?**

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

**Your checks will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.**

## **6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?**

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Actions as *Tappin, et al. v. TForce Freight*, and include your identifying information (full name, address, telephone number, approximate dates of employment, and last four digits of your social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **Send your request to be excluded to the Administrator by **INSERT DATE** (the "Response Deadline"), or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

## 7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement.. At least 16 court days before the **INSERT DATE** Final Approval Hearing, Class Counsel and/or Plaintiffs will file in Court (1) A Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel will send you copies of these documents at no cost to you. You can also access this information from the Court's Clerk's Office.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiffs are too high or too low. **The deadline for sending written objections to the Administrator is **INSERT DATE** (the "Response Deadline").** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action *Tappin, et al. v. TForce Freight* and include your name, current address, telephone number, and approximate dates of employment for Defendant and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

## 8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on **INSERT DATE** at **INSERT TIME** in Department 27 of the Sacramento County Superior Court. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiffs, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually. Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Court's website or contact Class Counsel to verify the date and time of the Final Approval Hearing.

## 9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendant and Plaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other

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

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

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

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

| <b><u>Settlement Administrator:</u></b>                                                                             |
|---------------------------------------------------------------------------------------------------------------------|
| <p style="text-align: center;">XX<br/> Email Address<br/> Mailing Address<br/> Telephone Number<br/> Fax Number</p> |

#### **10. WHAT IF I LOSE MY SETTLEMENT CHECK?**

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds

#### **11. WHAT IF I CHANGE MY ADDRESS?**

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To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

## EXHIBIT 2



**MAKAREM**  
**& ASSOCIATES**  
*Attorneys At Law*

Ronald W. Makarem  
Cameron Stewart  
Samuel Almon  
Jared Walder  
Rebecca Claudat  
Alexis Hames

*January 19, 2021*

**FILED ONLINE WITH THE LWDA**

ATTN: PAGA Administrator  
455 Golden Gate Avenue, 9th Floor  
San Francisco, CA 94102

**VIA U.S. CERTIFIED MAIL**

UPS Ground Freight, Inc.  
c/o Corporation Service Company  
dba CSC – Lawyer’s Incorporating Service  
(C1592199)  
2710 Gateway Oaks Dr., Suite 150N  
Sacramento, CA 95833

UPS Ground Freight, Inc.  
1000 Semmes Avenue  
Richmond, VA 23224

Re: *Donyeisha Mish, et al. v. UPS Ground Freight, Inc.*  
Notice of Labor Code Violations Pursuant to Labor Code section 2699.3(a)(l)

Dear PAGA Administrator:

This letter shall constitute the required written notification under Labor Code section 2699.3(a)(l) of Labor Code violations alleged against **UPS Ground Freight, Inc.** (“Employer”). Our client, **Donyeisha Mish, and other similarly situated aggrieved employees** (together, “Claimants”), worked as non-exempt employees for Employer. Claimants hereby issue this Notice to both the LWDA and Employer in compliance with the notice requirements of Labor Code section 2699.3(a)(l).

Claimants hereby give Notice of the following specific provisions of the Labor Code that have been violated and the facts and theories to support the alleged violations:

| <b>Violation</b>                                  | <b>Facts and Theories</b>                                                                                                                                                                                                                                                                     |
|---------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Labor Code sections 204, 218, 218.5, 218.6 & 1194 | Labor Code section 204 provides that covered employees are entitled to receive all wages earned for the pay period corresponding to the payday.<br><br>Here, Employer regularly failed to pay Claimants all wages earned for labor performed each pay period. For example, Employer regularly |

11601 Wilshire Bl. Ste. 2440 - Los Angeles, CA 90025  
Office: 310.312.0299 - Fax: 310.312.0296  
[www.makaremlaw.com](http://www.makaremlaw.com)

|                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                  | <p>suffered or permitted Claimants to work off the clock, but Claimants were not compensated for hours worked off the clock. For example, Employer, among other things, rounded employee time punches such that employees overall lost hours worked. Additionally, Employer required Claimants to change into their mandatory uniform before they were able to clock in and required Claimants to clock out before they were able to change out of their mandatory uniform and undergo mandatory security checks, all of which constituted time not recorded or compensated by the Employer. Further, Employer failed to provide the requisite one hour of pay at the regular rate of compensation for shifts with missed or non-compliant meal and/or rest periods. Accordingly, Employer violated the above code sections.</p>                                                                                                                                                                                                                                                                                                                                            |
| Labor Code section 1194          | <p>Labor Code section 1194 provides: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”</p> <p>Here, Employer failed to pay Claimants their earned minimum and/or overtime wages for all hours worked. For example, Employer regularly suffered or permitted Claimants to work off the clock, but Claimants were not compensated for hours worked off the clock. For example, Employer, among other things, rounded employee time punches such that employees overall lost hours worked. Additionally, Employer required Claimants to change into their mandatory uniform before they were able to clock in and required Claimants to clock out before they were able to change out of their mandatory uniform and undergo mandatory security checks, all of which constituted time not recorded or compensated by the Employer.</p> |
| Labor Code sections 510 and 1194 | <p>Labor Code section 510 states: “Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.”</p> <p>Labor Code section 1194 provides “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”</p> <p>Here, Claimants worked in excess of eight hours in one workday and/or in excess of 40 hours in one workweek, and were not compensated with</p>                                                                                                                                                                                         |

|                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                   | <p>overtime pay. As a result of this practice, Labor Code sections 510 and 1194 were violated.</p> <p>For example, Employer suffered or permitted Claimants to work off the clock, including by rounding employee time punches such that employees overall lost hours worked and by requiring Claimants to spend time changing in/out of their uniforms and undergo mandatory security checks, which on occasion caused Claimants to work overtime. Yet Employer neither compensated Claimants for such work nor counted the time spent working off the clock for purposes of calculating overtime. As a result of this practice, Labor Code sections 510 and 1194 were violated.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Labor Code Sections 226.7 and 512 | <p>Labor Code Sections 226.7 and 512 provide that no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes. Under these provisions, a first meal period is required no later than the end of an employee's fifth hour of work, and a second meal period no later than the end of an employee's 10th hour of work. If an employer fails to provide an employee meal periods in accordance with this law, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.</p> <p>Here, Employer regularly failed to provide compliant meal periods. For example, Employer regularly failed to provide full, uninterrupted 30 minute meal periods. Among other things, Claimants frequently had their meal periods interrupted such that they did last a full 30 minutes, because other employees would require assistance while performing their job duties. Claimants were not compensated with an hour of pay at their regular rate of pay for shifts when their meal periods were not taken, were taken late, or lasted less than 30 minutes without interruption. Accordingly, Employer violated these code sections. Additionally, Employer failed to pay Claimants employed as AFMs for one (1) hour of pay at their regular rate of compensation for each missed or non-compliant meal period.</p> |
| Labor Code section 226.7          | <p>Labor Code section 226.7 provides that employers shall authorize and permit employees to take rest periods at the rate of (10) minutes net rest time per four (4) hours of work, or major fraction thereof. This means that an employer must provide 10 minutes net rest time for each four-hour period worked by employees. If an employer fails to provide an employee rest periods in accordance with this law, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

|                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                        | <p>Here, Employer did not comply with these rest period provisions, as Employer routinely failed to authorize and permit Claimants to take their ten (10) minute rest periods for each four (4) hours, or major fraction thereof, they had worked. For example, due to the press of business and/or lack of staffing, Claimants routinely performed four consecutive hours of work without receiving a ten-minute rest period, or had their rest period delayed or interrupted. Employer also failed to pay Claimants for one (1) hour of pay at their regular rate of compensation for each day on which Claimants did not receive one or more compliant rest periods.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Labor Code Section 226 | <p>Labor Code Section 226 provides: “An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment.”</p> <p>Here, Employer engaged in practices violating Labor Code section 226 and failed to provide compliant wage statements containing all information required by Labor Code section 226. For example, Employer failed to provide compliant wage statements because they failed to reflect all compensable hours Claimants worked, including time lost due to the rounding of employee time punches, time spent changing in/out of required uniforms, or time spent undergoing mandatory security checks. As another example, Employer failed to provide compliant wage statements because the wage statements failed to list meal and/or rest period premiums owed for shifts with non-compliant meal/rest periods.</p> |

|                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Labor Code section 226, 1174, and 1174.5</p> | <p>Labor Code section 1174 provides that employers shall keep payroll records showing the hours worked and wages paid to each employee. These records are to be kept in accordance with rules established by the commission, but must be kept on file for a minimum of three (3) years.</p> <p>Labor Code section 1174.5 provides: “Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”</p> <p>Here, as a result of the aforementioned practices, <i>i.e.</i>, Employer suffering or permitting Claimants to work off the clock, including hours worked lost due to rounding or during uncompensated time spent changing or undergoing mandatory security checks, failing to pay all overtime wages due, and failing to authorize and permit compliant meal and rest periods, Employer knowingly and intentionally failed to maintain records, including but not limited to: all hours worked by Claimants, meal periods taken, and accurate itemized wage statements.</p> |
| <p>Labor Code Sections 201, 202, and 203</p>    | <p>Labor Code Section 201 states that if an employer discharges an employee, earned but unpaid wages at the time of discharge are due and payable immediately. Similarly, Labor Code Section 202 provides “[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Under section 203, if an employer willfully fails to pay in accordance with sections 201 or 202, any wages of an employee who is discharged or quits shall continue as a penalty.</p> <p>Here, Employer failed to pay all earned wages, including wages for hours worked lost due to rounding and hours worked while changing in/out of the required uniform or undergoing mandatory security checks, unpaid overtime, and wages for non-compliant meal and rest periods to employees who quit or were discharged, in violation of Sections 201 and 202. Nor has Employer paid any of the continuation wages under Section 203.</p>                                                                                                                     |

Please notify us within the required time period whether or not the Labor and Workforce Development Agency intends to investigate these alleged violations. If notice is not received within 65 calendar days of the postmark date of this letter, we will proceed with a civil action

for penalties pursuant to Labor Code Section 2699. This civil action will be pursued on behalf of Claimants. Please send the Notice to our office located at 11601 Wilshire Blvd., Suite 2440, Los Angeles, California 90025.

Thank you for your attention to this matter.

Respectfully,

MAKAREM & ASSOCIATES, APLC

By: \_\_\_\_\_  
Samuel Almon

## EXHIBIT 3

## EXHIBIT 4

# JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618

TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

**November 24, 2021**

**Via LWDA Website**

Labor and Workforce Development Agency

Attn: PAGA Administrator

1515 Clay Street, Suite 801

Oakland, CA 94612

<http://www.dir.ca.gov/Private-Attorneys-General-Act>

**Via Certified Mail**

TFORCE FREIGHT, INC., a Virginia Corporation

Agent for Service of Process:

Corporation Service Company Which Will Do

Business in California as CSC – Lawyers Incorporating Service

2710 Gateway Oaks Drive, Suite 150N

Sacramento, CA 95883

Receipt No. 7021 0950 0000 7376 5996

**Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698, *et seq.***

To Whom It May Concern:

PLEASE TAKE NOTICE that plaintiff Andrew D. Tappin individually and on behalf of all similarly situated representative aggrieved employees, gives NOTICE to commence and/or amend a civil action pursuant to California Labor Code Sections 2698, *et seq.* Plaintiff hereby gives written notice by certified mail to the Labor and Workforce Development Agency, and TForce Freight, Inc., a Virginia Corporation, through its Agent for Service of Process.

Plaintiff hereby attaches a copy of the Proposed PAGA Representative Action Complaint to be filed in the Sacramento County Superior Court, as though fully set forth herewith setting out the specific provisions of the Labor Code Plaintiff alleges have been violated, including the facts and theories. All labor provisions in the Proposed PAGA Representative Action Complaint alleged to have been violated pertain to all entities and individuals named in the Complaints, even if not expressly specified.

Please advise within sixty (60) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and if you have any questions, please do not hesitate to contact me.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Gregory Mauro', with a stylized, cursive script.

Gregory Mauro

Enclosure: Proposed PAGA Representative Action Complaint

1 JAMES HAWKINS APLC  
2 James R. Hawkins, Esq. (#192925)  
3 Gregory Mauro, Esq. (#222239)  
4 Michael Calvo, Esq. (#314986)  
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6 9880 Research Drive, Suite 200  
7 Irvine, CA 92618  
8 Tel.: (949) 387-7200  
9 Fax: (949) 387-6676  
10 Email: James@jameshawkinsaplc.com  
11 Email: Greg@jameshawkinsaplc.com  
12 Email: Michael@jameshawkinsaplc.com  
13 Email: Jeanne@jameshawkinsaplc.com

14 Attorneys for Plaintiff ANDREW D. TAPPIN,  
15 On behalf of the general public as private attorney general

16  
17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
18 **FOR THE COUNTY OF SACRAMENTO**  
19

20 ANDREW D. TAPPIN, on behalf of the  
21 general public as private attorney general,

22  
23 Plaintiff,

24  
25 v.

26 TFORCE FREIGHT, INC., a Virginia  
27 Corporation; and DOES 1-50, inclusive,

28  
29 Defendants.

CASE NO.:

ASSIGNED FOR ALL PURPOSES TO:  
JUDGE:  
DEPT:

**PAGA REPRESENTATIVE ACTION  
COMPLAINT PURSUANT TO THE  
PRIVATE ATTORNEYS GENERAL ACT  
(Labor Code §§ 2698 *et seq*).**

COMES NOW Plaintiff ANDREW D. TAPPIN (“Plaintiff”), on behalf of the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, and asserts claims against Defendants TFORCE FREIGHT, INC., a Virginia Corporation; and DOES 1-50, inclusive (collectively “Defendants”) as follows:

## **I. INTRODUCTION**

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. In this case, Defendants violated various provisions of the California Labor Code. As set forth below, Defendants implemented policies and practices which led to Defendant’s: (a) failure to provide meal periods for every work period exceeding more than five (5) or ten (10) hours per day and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a meal period; (b) failure to provide rest breaks for every four hours or major fraction thereof worked and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a rest period; (c) failing to pay all wages earned and owed upon separation from Defendant’s employ; (d) failing to provide accurate itemized wage statements; (e) failing to provide and accurately calculate COVID-19 supplemental sick pay; (f) failing to reimburse expenses. As a result Plaintiff seeks penalties under Labor Code 2698, *et seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

## **II. JURISDICTION AND VENUE**

3. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except those given by statute to other trial courts.” The statutes under which this action is brought do not give jurisdiction to any other court.

4. This Court has jurisdiction over Defendants because, upon information and belief, each Defendant either has sufficient minimum contacts in California, or otherwise intentionally

1 avails itself of the California market so as to render the exercise of jurisdiction over it by the  
2 California Courts consistent with traditional notions of fair play and substantial justice.

3         5.         Venue as to each Defendant is proper in this judicial district pursuant to Code of  
4 Civil Procedure section 395. Defendants are doing business throughout California, including but  
5 not limited to Tulare County, and each Defendant is within the jurisdiction of this Court for  
6 service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and  
7 all other aggrieved employees within the State of California. Defendants employ numerous  
8 aggrieved employees in in the State of California.

9         6.         On information and belief, Defendants have conducted business within the State of  
10 California during the purported liability period and continue to conduct business throughout the  
11 State of California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and the  
12 similarly situated non-exempt aggrieved employees within California.

13         7.         The California Superior Court also has jurisdiction in this matter because on  
14 information and belief there are no federal questions at issue, as the issues herein are based solely  
15 on California statutes and law, including the California Labor Code, the IWC Wage Orders, the  
16 California Code of Civil Procedure, the California Civil Code, and the California Business and  
17 Professions Code.

18         8.         On information and belief, during the statutory liability period and continuing to  
19 the present ("liability period"), Defendant consistently maintained and enforced against  
20 Defendant's Non-Exempt Aggrieved Employees, among others, the following unlawful practices  
21 and policies, in violation of California state wage and hour laws: (a) failure to provide meal  
22 periods for every work period exceeding more than five (5) or ten (10) hours per day and failure to  
23 pay an additional hour's of pay or accurately pay an additional hour's of pay in lieu of providing a  
24 meal period; (b) failure to provide rest breaks for every four hours or major fraction thereof  
25 worked and failure to pay an additional hour's of pay or accurately pay an additional hour's of pay  
26 in lieu of providing a rest period; (c) failing to pay all wages earned and owed upon separation  
27 from Defendant's employ; (d) failing to provide accurate itemized wage statements; (e) failing to  
28

1 provide and accurately calculate COVID-19 supplemental sick pay; (f) failing to reimburse  
2 expenses.

3 9. Plaintiff on behalf of the general public as private attorney general and all other  
4 aggrieved employees bring this action pursuant to Labor Code 2698, et seq. for violations  
5 enumerated under 2699.5 as follows: sections 201-203, 248.2, 512, 558, 226, 226.3, 226.7, 1174,  
6 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802, and seeking penalties, interest, attorneys' fees and  
7 costs.

### 8 **III. PARTIES**

#### 9 **A. Plaintiff**

10 10. Plaintiff, ANDREW D. TAPPIN, was at all times relevant to this action, a resident  
11 of California. Plaintiff was employed by Defendants in approximately April 2021 as a Non-  
12 Exempt Employee with the title of Dock Worker and worked during the liability period for  
13 Defendants until Plaintiff's separation from Defendants' employ in approximately September  
14 2021. Plaintiff's duties included, but were not limited to, the loading and unloading of trailers for  
15 delivery.

16 11. As Defendants' employee, Plaintiff, and all other aggrieved employees were  
17 regularly required to and subsequently suffered:

- 18 a. work without being permitted or authorized a minimum ten-minute rest period for  
19 every four hours or major fraction thereof worked and not compensated one (1)  
20 hour of pay at his regular rate of compensation for each workday that a rest period  
21 was not provided, all in violation of California labor laws, regulations, and the  
22 Industrial Welfare Commission Wage Orders ("IWC");
- 23 b. work in excess of five and ten hours per day without being provided meal periods  
24 and not compensated one (1) hour of pay at the regular rate of compensation for  
25 each workday that a meal period was not provided, all in violation of California  
26 labor laws, regulations, and the Industrial Welfare Commission Wage Orders  
27 ("IWC");
- 28 c. not provided and accurately paid COVID-19 supplemental sick pay;

- d. not reimbursed for business expenses incurred;
- e. not timely paid wages;
- f. not provided accurate itemized wage statements.

12. On information and belief, Defendants willfully failed to pay all earned wages in the form regular wages and overtime wages, and meal and rest period premium wages, to its Non-Exempt Employees and members of the Representative Group; nor have Defendants returned to Plaintiff or members of the Representative Group, upon or after separation from employment with Defendants, all wages earned and owing. Plaintiff seeks penalties under Labor Code 2698, *et seq.* on behalf of the general public as private attorney general and all other aggrieved employees..

#### **B. Defendants**

13. Defendants TFORCE FREIGHT, INC., a Virginia Corporation, operates as a transit and shipping company. Plaintiff estimates there are in excess of 100 Non-Exempt Employees who work or have worked for Defendants over the last year.

14. Other than identified herein, Plaintiff is unaware of the true names, capacities, relationships and extent of participation in the conduct alleged herein, of the defendants sued as DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint when their true names and capacities are ascertained.

15. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and other members of the Representative Group, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that each defendant acted in all respects pertinent to this action as the agent of the other defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendants.

#### **IV. GENERAL ALLEGATIONS**

16. At all times set forth herein, Defendants employed Plaintiff and other persons in the

1 capacity of non-exempt positions, however titled, throughout the state of California.

2 17. Plaintiff is informed and believes Aggrieved Employees have at all times pertinent  
3 hereto been Non-Exempt within the meaning of the California Labor Code and the implementing  
4 rules and regulations of the IWC California Wage Orders.

5 18. Defendants continue to employ Non-Exempt Employees, however titled, in  
6 California and implement a uniform set of policies and practices to all non-exempt employees, as  
7 they were all engaged in the generic job duties related to Defendants' transit and shipping  
8 business.

9 19. Plaintiff is informed and believes, and thereon alleges, that Defendants are and  
10 were advised by skilled lawyers and other professionals, employees, and advisors with knowledge  
11 of the requirements of California's wage and employment laws.

12 20. On information and belief, during the relevant time frame, Plaintiff and Aggrieved  
13 Employees frequently worked well over eight (8) hours in a day and forty (40) hours in a work  
14 week.

15 21. During the relevant time frame, Defendants compensated Plaintiff and Aggrieved  
16 Employees based upon an hourly rate.

17 22. On information and belief, during the relevant time frame, Plaintiff and Aggrieved  
18 Employees typically worked five (5) days a week.

19 23. Plaintiff is informed and believes that the Aggrieved Employees were required to  
20 keep similar schedules.

21 24. Plaintiff and the Aggrieved Employees were regularly required to work shifts in  
22 excess of five hours without being provided a lawful meal period and over ten hours in a day  
23 without being provided a second lawful meal period as required by law.

24 25. Plaintiff and Aggrieved Employees were required to wait to take their meal breaks  
25 until after training had concluded, even when that training was held after five hours without being  
26 provided a lawful meal period.

27 26. Indeed, during the relevant time, as a consequence of Defendants' staffing and  
28 scheduling practices, work demands, and Defendants' policies and practices, Defendants

1 frequently failed to provide Plaintiff and the Aggrieved Employees timely, legally complaint  
2 uninterrupted 30-minute meal periods on shifts over five hours as required by law.

3         27. Similarly, as a consequence of Defendants' staffing and scheduling practices, work  
4 demands, and Defendants' policies and practices, Defendants frequently failed to provide Plaintiff  
5 and the Aggrieved Employees legally compliant second meal periods on shifts over ten hours as  
6 required by law.

7         28. On information and belief, Plaintiff and Aggrieved Employees did not waive their  
8 rights to meal periods under the law.

9         29. Plaintiff and the Aggrieved Employees were not provided with valid lawful on-duty  
10 meal periods.

11         30. Despite the above-mentioned meal period violations, Defendants failed to  
12 compensate Plaintiff, and on information and belief, failed to compensate Aggrieved Employees,  
13 one additional hour of pay at their regular rate as required by California law when meal periods  
14 were not timely or lawfully provided in a compliant manner.

15         31. Plaintiff is informed and believes, and thereon alleges, that Defendants know,  
16 should know, knew, and/or should have known that Plaintiff and the other Aggrieved Employees  
17 were entitled to receive premium wages based on their regular rate of pay under Labor Code  
18 §226.7 but were not receiving such compensation.

19         32. In addition, during the relevant time frame, Plaintiff and the Non-Exempt  
20 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest  
21 period for every four hours worked or major fraction thereof, which is a violation of the Labor  
22 Code and IWC wage order.

23         33. Defendants maintained and enforced scheduling practices, policies, and imposed  
24 work demands that frequently required Plaintiff and Aggrieved Employees to forego their lawful,  
25 paid rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such  
26 requisite rest periods were not timely authorized and permitted as a result of Defendants' failure to  
27 provide relief for Plaintiff and Aggrieved Employees to take their lawfully required breaks.

28         34. Despite the above-mentioned rest period violations, Defendants did not compensate

1 Plaintiff, and on information and belief, did not pay Aggrieved Employees one additional hour of  
2 pay at their regular rate as required by California law, including Labor Code section 226.7 and the  
3 applicable IWC wage order, for each day on which lawful rest periods were not authorized and  
4 permitted.

5 35. In addition, upon information and belief, Plaintiff alleges that Defendants failed to  
6 provide COVID-19 supplemental paid sick leave to Plaintiff and the Aggrieved Employees as  
7 required by law when its employees were suffering from enumerated COVID-19 related issues.

8 36. Defendants also failed to reimburse Plaintiff and Aggrieved Employees for  
9 business expenses incurred pursuant to Labor Code § 2802. For instance, Plaintiff and Aggrieved  
10 Employees were required to drive their personal vehicles to different locations during work hours,  
11 for work-related purposes.

12 37. Defendants also failed to provide accurate, lawful itemized wage statements to  
13 Plaintiff and the Aggrieved Employees in part because of the above specified violations. In  
14 addition, upon information and belief, Defendants omitted an accurate itemization of total hours  
15 worked, including premiums due and owing for meal and rest period violations, gross pay and net  
16 pay figures from Plaintiff and the Aggrieved Employees' wage statements.

17 38. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
18 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours  
19 thereof for resignations without prior notice as the case may be) they had a duty to accurately  
20 compensate Plaintiff and Aggrieved Employees for all wages owed including minimum wages,  
21 meal and rest period premiums, and that Defendants had the financial ability to pay such  
22 compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part  
23 because of the above-specified violations.

24 39. Upon information and belief, Defendants knew and or should have known that it is  
25 improper to implement policies and commit unlawful acts such as:

26 (a) requiring employees to work four (4) hours or a major fraction thereof without  
27 being provided a minimum ten (10) minute rest period and without compensating the employees  
28 with one (1) hour of pay at the employees' regular rate of compensation for each workday that a

1 rest period was not provided;

2 (b) requiring employees to work in excess of five (5) hours or ten (10) hours per day  
3 without being provided an uninterrupted thirty minute meal period and/or a second meal period,  
4 and without compensating employees with one (1) hour of pay at the regular rate of compensation  
5 for each workday that such a meal period was not provided;

6 (c) failing to provide accurate itemized wage statements;

7 (d) failing to timely pay Plaintiff and Aggrieved Employees;

8 (e) failure to reimburse business expenses; and

9 (f) failure to provide and accurately pay COVID-19 supplemental sick pay.

10 40. In addition to the violations above, and on information and belief, Defendants knew  
11 they had a duty to compensate Plaintiff and Aggrieved Employees for the allegations asserted  
12 herein, and that Defendants had the financial ability to pay such compensation, but willfully,  
13 knowingly, recklessly, and/or intentionally failed to do so.

14 **V. REPRESENTATIVE CLAIMS**

15 **THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 et seq.**

16 41. Plaintiff incorporates by reference and re-alleges each and every allegation  
17 contained above, as though fully set forth herein.

18 42. On or about November 24, 2021, Plaintiff complied with notice requirements  
19 pursuant to Labor Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto  
20 as **Exhibit A**, indicating that the LWDA and Defendants were put on notice of the claims alleged  
21 here and that the notice requirement has been satisfied. Sixty-five days have passed and the  
22 LWDA has not indicated intent to investigate the claims. Therefore, Plaintiff may proceed with  
23 this action in a representative capacity. The substance and violations set forth in this Complaint of  
24 which the LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA  
25 Representative Action Complaint to the LWDA.

26 43. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a).  
27 Plaintiff brings this cause of action on behalf of all current and former California Non-Exempt  
28 Employees of Defendants.

1           44. Pursuant to Labor Code section 2699(a) Plaintiff seek to recover civil penalties for  
2 which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint,  
3 including without limitation Labor Code section 201-203, 248.2, 512, 558, 226, 226.3, 226.7,  
4 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802, and 2698 *et seq.*, applicable IWC Wage  
5 Orders and California Code of Regulations, Title 8, section 11000 *et seq.*

6           45. At all times relevant, Plaintiff and all other aggrieved employees regularly  
7 performed non-exempt work in excess of 50% of the time, and thus, were subject to the meal and  
8 rest break requirements of the applicable IWC wage order and the Labor Code.

9           46. Defendants failed to provide Plaintiff and all other aggrieved employees  
10 uninterrupted duty free meal periods of not less than thirty (30) minutes. Defendants implemented  
11 and enforced policies of on duty meal period practices which required employees to work during  
12 their meal periods, to forego their meal periods, and/or to return to work from meal periods prior  
13 to thirty (30) uninterrupted minutes. As a proximate result of the aforementioned violations,  
14 Plaintiff and all other aggrieved employees have been damaged in an amount according to proof at  
15 time of trial.

16           47. Plaintiff, and on information and belief, all aggrieved employees, were  
17 systematically not permitted or authorized to take ten minute rest periods for every four hours  
18 worked or major fraction thereof, which is a violation of the Labor Code and IWC wage order.  
19 Plaintiff and on information and belief, aggrieved employees, were not compensated with one  
20 hour of wages for every day in which a rest period was missed or untimely as a result of  
21 Defendants' policies, practices, or work demands. By failing to authorize and permit a ten-minute  
22 rest period for every four hours or major fraction thereof worked per day by its Non-Exempt  
23 Employees, and by failing to provide compensation for such non-provided or shortened rest  
24 periods, as alleged above, Defendants willfully violated the provisions of Labor Code sections  
25 226.7, 512 and the applicable IWC Wage Order.

26           48. Defendants also willfully violated Labor Code sections 201-203 by failing to  
27 provide all owed wages at separation from employment. Labor Code sections 201 and 202 require  
28 Defendants to pay their employees all wages due either at time of firing, or within seventy-two

1 (72) hours of voluntary separation, if not sooner. Section 203 of the Labor Code provides that if  
2 an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to  
3 pay the subject employee's wages until the back wages are paid in full or an action is commenced.  
4 The penalty cannot exceed 30 days of wages.

5 49. Plaintiff and all other aggrieved employees who were separated from employment  
6 are entitled to compensation for all forms of wages earned, including but not limited to  
7 compensation regular and overtime wages, and for non-provided meal and rest periods, but to date  
8 have not received such compensation, therefore entitling them to penalties under PAGA for  
9 violations of Labor Code sections 201-203.

10 50. On information and belief, Defendants willfully failed to pay all wages due and  
11 owing upon separation from employment. These wages include regular and overtime wages, and  
12 meal and rest period premiums.

13 51. On information and belief, Defendants failed to provide accurate itemized wage  
14 statements which failed to include the rate of pay and total hours worked per pay period, failed to  
15 account for all hours worked, including overtime, and lastly the accurate accounting of, the lawful  
16 meal and rest period premiums due and owing to Plaintiff and the aggrieved employees, pursuant  
17 to Labor Code section 226(a).

18 52. Defendants have failed to provide Plaintiff and Aggrieved Employees rates of pay  
19 and the hours for which they worked for any given pay period.

20 53. Defendants have failed to accurately record all time worked.

21 54. Defendants have also failed to accurately record the meal and rest period premiums  
22 owed and all wages owed per pay period.

23 55. Plaintiff and Aggrieved Employees have been injured as they were unable to  
24 determine whether they had been paid correctly for all hours worked per pay period among other  
25 things

26 56. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a)  
27 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)  
28 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee

1 for each violation in a subsequent citation, for which the employer fails to provide the employee a  
2 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

3 57. On information and belief, Defendants failed to reimburse Plaintiff and Aggrieved  
4 Employees for business expenses incurred as described above. Labor Code § 2802 requires  
5 Defendants to indemnify Plaintiff and Aggrieved Employees for necessary expenditures incurred  
6 in direct consequences of the discharge of his or her duties. Despite these realities of the job,  
7 Defendants failed to provide reimbursements.

8 58. Labor Code §2804 states in pertinent part: “Any contract or agreement, express or  
9 implied, made by any employee to waive the benefits of this article or any part thereof is null and  
10 void, and this article shall not deprive any employee or his or her personal representative of any  
11 right or remedy to which he is entitled under the laws of this State.

12 59. Labor Code Section 248.2(b)(1)(A)-(G) provides that: “An employer shall provide  
13 COVID-19 supplemental paid sick leave to each covered employee if that covered employee is unable  
14 to work or telework” due to a COVID-19 related quarantine; is attending an appointment to receive a  
15 vaccine for COVID-19; is experiencing symptoms related to a COVID-19 vaccine or is experiencing  
16 COVID-19 symptoms and seeking medical diagnosis; is caring for a family member who is subject to  
17 quarantine; or who is caring for a child whose school or place of care is closed or unavailable due to  
18 COVID-19 on the premises. Defendants failed to provide COVID-19 supplemental paid sick leave to  
19 its employees when they were suffering from one of the enumerated COVID-19 related issues.

20 60. Labor Code § 248.2(b)(3) provides that the employer shall calculate supplemental  
21 paid sick leave for nonexempt employees by the highest of the following: “(i)(I) Calculated in the  
22 same manner as the regular rate of pay for the workweek in which the covered employee uses  
23 COVID-19 supplemental paid sick leave, whether or not the employee actually works overtime in  
24 that workweek; (II) Calculated by dividing the covered employee’s total wages, not including  
25 overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior  
26 90 days of employment; (III) The state minimum wage; (IV) The local minimum wage to which  
27 the covered employee is entitled.” Defendants have violates Labor Code § 248.2 by failing to  
28 accurately pay COVID-19 supplemental paid sick leave to its employees at the regular rate.

61. Additionally, Defendants have no accurate records relating to aggrieved employees' work periods, meal periods, total daily hours worked, total hours worked per payroll period and applicable pay rates, in violation of Wage Order. Similarly, Defendants failed to maintain accurate records relating to hours worked daily in violation of Labor Code sections 1174(d), 1174.5.

62. As a result of Defendants' unlawful conduct, Plaintiff and Aggrieved employees are entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours worked.

63. Plaintiff and the Representative Aggrieved Employees are entitled to recover Penalties and attorneys' fees and costs sunder Labor Code section 2698, et seq.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

64. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;

65. For reasonable attorneys' fees and costs; and

66. For such other and further relief as the Court deems proper.

Dated: November 24, 2021

JAMES HAWKINS APLC

By:

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