

BOYAMIAN LAW, INC.

Michael H. Boyamian (SBN 256107)
Armand R. Kizirian (SBN 293992)
550 North Brand Boulevard, Suite 1500
Glendale, California 91203
Telephone: 818.547.5300
Facsimile: 818.547.5678
Email(s): michael@boyamianlaw.com,
armand@boyamianlaw.com

Attorneys for Plaintiff CHRISTIAN MATUTE,
Individually and On Behalf of All Others Similarly Situated

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CHRISTIAN MATUTE, an individual;
Individually and on Behalf of All Similarly
Situated Individuals,

Plaintiff,

v.

PILOT AIR FREIGHT LLC dba PILOT
FREIGHT SERVICES, a Pennsylvania
Limited Liability Company; BEST BUY CO.,
INC., a Minnesota Corporation; and DOES 1
through 25, Inclusive,

Defendants.

Case No: 4:22-cv-00587-YGR

[The Honorable Yvonne Gonzalez Rogers]

CLASS ACTION

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

[CONCURRENTLY FILED WITH MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT;
[PROPOSED] ORDER]

Date: June 20, 2023

Time: 2:00 p.m.

Courtroom: 1 (4th Floor), Oakland Courthouse

DECLARATION OF ARMAND R. KIZIRIAN

I, Armand R. Kizirian, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California. I am a member in good standing of the State Bar of California. I am one of the attorneys of record in the instant litigation, and I make this declaration in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement. All of the information set forth herein is based on my personal and firsthand knowledge and if called and sworn as a witness, I could and would competently testify thereto.

2. I am of counsel to Boyamian Law, Inc. I graduated from the U.C.L.A. School of Law in 2013 and was admitted to practice in California that year. I have been named a Super Lawyer Rising Star for 2019-2023 by Thomson Reuters. I am also a member of the California Employment Lawyers Association and the Consumer Attorneys Association of Los Angeles.

3. Since my admission to the bar, my practice has focused upon plaintiffs-side employment matters, especially wage and hour class and representative actions. I have litigated numerous off-the-clock, unpaid overtime, meal break, rest break, misclassification, and piece-rate cases. In addition, my practice has also encompassed individual employment actions such as for wrongful termination and retaliation.

4. I have been closely involved in a significant number of wage and hour and consumer class and representative matters since I began practicing several years ago. Many of these cases have resulted in substantial recoveries for employees and consumers across California. Examples of these recoveries include the following matters:

- a. *Cortes v Daley Foods*, Case No. BC 496955 and *Gutierrez v. Daley Foods*, Case No. BC524915 (Los Angeles County Superior Court, 2015), wage and hour class action involving California Labor Code violations relating to restaurant workers, settled for \$2.2 million.
- b. *Fuentes, et al. v. Macy's West Stores, Inc.*, Case No. CV 14-00790-ODW (FFMx) (C.D. Cal 2015) wage and hour class action involving misclassification of independent contractors, which settled for \$4 million.

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- c. *Leos v. FedEx*, Case No. 14-02864-ODW-AGR (C.D. Cal. 2015), a class action for unpaid wages pursuant to the Living Wage Ordinance, settled for \$385,000.
- d. *Timothy J. Connell, et al, Klara Paksy, et al and Dale Bystrom, et al v. CVS Pharmacy, Inc., et al.*, LASC Case Nos. BC523172, BC523491, BC525991 (2016) wage and hour class action involving Labor Code overtime violations on behalf of pharmacists (\$7,461,600 settlement).
- e. *Angil Sharobiem, et al v. CVS Pharmacy, Inc., et al.*, Case No. 2:13-cv-09426-GHK-FFM (C.D. Cal. 2016) wage and hour class action involving Labor Code overtime violations on behalf of pharmacists (\$2,937,600 settlement).
- f. *Rimanpreet Uppal v. CVS Pharmacy, Inc., et al.*, Case No. 3:14-cv-02629-VC (N.D. Cal. 2016) wage and hour class action involving Labor Code overtime violations on behalf of pharmacists (\$2,350,800 settlement).
- g. *Ian H. Stark, et al. v. CVS Pharmacy, Inc., et al.*, LASC Case Nos. BC476431, BC489738, BC501118, BC502723, BC526977, BC570812 (2016) wage and hour class action involving Labor Code travel time violations on behalf of pharmacists (\$2,000,000 settlement).
- h. *Phillips v. AccentCare, Inc., et al.*, Case No. CIVDS1620673 (2017) wage and hour class action involving Labor Code overtime violation on behalf of home health nurses and other home health professionals (\$1,500,000.00).
- i. *Pursell v. Pacific Wings, LLC*, LASC Case No. BC522083 (2017) wage and hour class action involving Labor Code off-the-clock, overtime, meal and rest break, and unreimbursed business expense violations on behalf of restaurant servers (\$1,300,000).
- j. *Hooper v. URS Midwest, Inc.*, Case No. CIVDS1607489 (2017) wage and hour class action involving Labor Code overtime violation on behalf of Car Haulers (\$2,900,000).
- k. *Tyrer v First Student, Inc.*, Case No. BC459305 (2017) wage and hour class action involving Labor Code overtime violations on behalf of school bus drivers (\$475,000 settlement).

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- l. *Nunez v. CompuCom Systems, Inc.*, LASC Case No. BC618385 (2017) wage and hour class action involving Labor Code overtime, meal and rest break, and unreimbursed business expense violations on behalf of home-based service technicians (\$1,500,000).
- m. *Garcia v. Macy's West Stores, Inc., et al.*, Case No. 3:16-cv-04440-WHO (N.D. Cal. 2017) wage and hour class action involving misclassification of independent contractors (\$1,550,000 partial settlement).
- n. *Oard v. Daily Press, LLC, et al.*, Case No. 5:16-cv-02039-SVW-KK (C.D. Cal. 2018) wage and hour class action involving misclassification of independent contractor newspaper carriers (\$500,000 settlement).
- o. *Patrick Malone, et al. v. KAG West, LLC, et al.*, Alameda County Superior Court Case Nos. RG15784137 and RG16814354 (2019) wage and hour class and PAGA actions involving overtime and meal and rest break violations for truck drivers (\$1,600,000 settlement).
- p. *Raymond Cressall, et al. v. Galpin Motors, Inc., et al.*, San Bernardino County Superior Court Case No. CIVDS1809319 (2019), wage and hour class action concerning overtime and meal and rest break violations in re a commission-only compensation plan (\$2,000,000).
- q. *Pae, et al. v. Fox Restaurant Concepts, LLC, et al.*, Case No. 2:16-CV-06965-DSF-FFM (C.D. Cal. 2019) wage and hour class action involving Labor Code off-the-clock, overtime, meal and rest break, and unreimbursed business expense violations on behalf of restaurant servers (\$900,000).
- r. *Miranda, et al. v. R&L Carriers Shared Services, LLC*, Case No. 2:18-cv-10063-SVW-JC (C.D. Cal. 2020), wage and hour class and PAGA action involving failure to provide meal and rest breaks and reimbursement of necessary expenditures to California-based truck drivers (\$375,000).
- s. *Delores Humes, et al. v. First Student, Inc.*, Eastern District of California Case No. 1:15-cv-01861-BAM (2020), wage and hour class action involving Labor Code wage statement violations on behalf of school bus drivers (\$650,000 settlement);

1 additionally obtained reversal of denial of class certification via appeal to Ninth
2 Circuit, *Humes v. First Student, Inc.*, 758 F. App'x 593 (9th Cir. 2019).

3 t. *Rita Khatchadourian, et al. v. Sterling Bank and Trust, FSB*, Alameda County
4 Superior Court Case No. RG19003028 (2020), wage and hour PAGA action
5 concerning overtime, meal break, rest break, and commission agreement violations
6 for bank employees (\$300,000 settlement).

7 u. *Mejia v. Dunn-Edwards Corp.*, Los Angeles County Case No. BC640070 (2020),
8 wage and hour PAGA action concerning off-the-clock work and meal and rest break
9 violations for paint store employees (\$250,000 settlement).

10 v. *Garcia v. Macy's West Stores, Inc., et al. ("Garcia II")*, Case No. 3:16-cv-04440-
11 WHO (N.D. Cal. 2020) wage and hour class action involving misclassification of
12 independent contractors (\$3,500,000 partial settlement).

13 w. *Perez v. The Roman Catholic Archbishop of Los Angeles*, Los Angeles County Superior
14 Court Case No. BC714614 (2021) wage and hour class action on behalf cemetery
15 workers concerning unpaid overtime, meal and rest break violations (\$1,300,000
16 settlement).

17 x. *Espinoza v. Williams Sonoma, Inc., et al.*, Los Angeles County Superior Court Case No.
18 BC693245 (2021) wage and hour class action involving misclassification of
19 independent contractors (\$2,250,000 settlement).

20 y. *Gonzales v. San Gabriel Transit, Inc.*, Los Angeles County Superior Court Case No.
21 BC536584, California Court of Appeal Case No. B282377, California Supreme Court
22 Case No. S259027 – denial of class of misclassified taxi cab drivers reversed by Court
23 of Appeal after published opinion, *Gonzales v. San Gabriel Transit, Inc.*, 40 Cal. App.
24 5th 1131, 1149 (2019), *review dismissed, cause remanded sub nom.*, 481 P.3d 1144
25 (Cal. 2021).

26 z. *Ornelas v. Tapestry, Inc.*, Northern District of California Case No. 3:18-cv-06453-
27 WHA (2022), wage and hour class action involving employee security inspections
28 (\$342,500 settlement).

1 aa. *Caballero v. Fidelitone Last Mile, Inc.*, San Bernardino County Superior Court Case
 2 No. CIVSB2102002 (2022), wage and hour class action involving misclassification of
 3 independent contractors (\$1,000,000 settlement).

4 bb. *Whitten v. Rite-Aid*, Los Angeles County Superior Court Case No. BC646398 (2022),
 5 wage and hour class action involving security checks for warehouse employees
 6 (\$1,762,424 settlement).

7 5. A true and correct copy of the Settlement Agreement negotiated between the Parties to
 8 resolve this matter in its entirety, including all exhibits, is attached as **Exhibit “1”**.

9 6. Defendant Pilot is a logistics company that partners with third-party subhaulers who
 10 transport goods, including mile deliveries, which are the focus of this suit. Pilot contracts directly with
 11 licensed motor carrier Contract Carriers who enter into Subhauler Agreements with Defendants
 12 (“primaries”) to take responsibility for transportation and to provide the trucks and equipment to
 13 facilitate transport. Subhaulers then contract with drivers and helpers who do not contract with Pilot
 14 directly, but who are tendered freight by subhaulers (“secondaries”).

15 7. This freight that Putative Settlement Class Members moved was provided by Defendant
 16 Best Buy. Along with Pilot’s personnel, the warehouses that the Contract Carriers, Drivers, and
 17 Helpers operated out of were also staffed by employees of Best Buy. Essentially, while Pilot’s role
 18 was focused more upon the logistics of planning the deliveries to Best Buy’s customers, it is Plaintiff’s
 19 contention that Best Buy’s role was in ensuring that the Contract Carriers, Drivers, and Helpers
 20 provided the appropriate customer experience while conducting the deliveries. Plaintiff Christian
 21 Matute drove as a secondary in the form of a Driver and Helper.

22 8. Plaintiff contends that primaries and secondaries, i.e., the Contract Carriers, Drivers,
 23 and Helpers, are misclassified as independent contractors when they are really employees. Defendants
 24 deny that any of the Contract Carriers, Drivers, or Helpers have been misclassified. If Plaintiff were to
 25 establish the employment relationship between Defendants and the Putative Class, Plaintiff contends
 26 that Defendants would owe the Contract Carriers, Drivers, and Helpers substantial compensation for
 27 violation of California’s wage and hour laws as no attempt is made by Defendants to track the Putative
 28 Class’s hours of work, ability to take meal and rest breaks, or reimbursement of the Class’s work

1 expenses.

2 9. This is so, Plaintiff contends, because Defendants maintained no meal period policies,
3 rest policies, or any other wage and hour policies for the Settlement Class because they simply did not
4 treat them as employees. Moreover, the expenses Plaintiff contends that Settlement Class Members,
5 particularly Contract Carriers, were forced to shoulder include the costs for things like truck insurance,
6 fuel, vehicle maintenance, and cell phones used to communicate with dispatch. Defendants deny all of
7 these claims.

8 10. There are approximately 567 Putative Settlement Class Members who currently or
9 formerly delivered Best Buy products as Contract Carriers, Drivers, and Helpers via warehouses
10 managed by Defendant Pilot in the State of California. As noted, Plaintiff claims that these Contract
11 Carriers, Drivers, and Helpers were Defendants misclassified independent contractors who should have
12 been treated as employees. However, because Defendants maintain that these Contract Carriers,
13 Drivers, and Helpers were not their employees, Defendants cannot be liable for the allegedly unpaid
14 wages, penalties, or other damages, that were sought in this action.

15 11. On September 23, 2021, Plaintiff filed this case in Alameda County Superior Court on
16 behalf of all current and former individuals who performed delivery services for Defendants as
17 Contract Carriers, Drivers, and/or Helpers in the State of California from March 28, 2017 and
18 continuing while this action was pending. The Complaint included nine causes of action: (1) Failure to
19 Pay Minimum Wages; (2) Failure to Pay Overtime Compensation; (3) Reimbursement of Employment
20 Expenses; (4) Unlawful Deduction from Wages; (5) Failure to Provide Meal Periods; (6) Failure to
21 Authorize and Permit Rest Periods; (7) Failure to Furnish Accurate Wage and Hour Statements; (8)
22 Waiting Time Penalties; and (9) Unfair Competition. On January 27, 2022, Plaintiff filed the operative
23 First Amended Complaint which added a tenth cause of action under the Private Attorneys General Act
24 of 2004.

25 12. On January 28, 2022, Defendant Pilot removed this action to the United States District
26 Court for the Northern District of California. The case was ultimately assigned to the Honorable
27 Yvonne Gonzalez Rogers. As the Parties held their early meeting of counsel pursuant to Rule 26(f) in
28 the spring of 2023, Counsel discussed the possibility of attending an early mediation. The Parties

1 agreed to attend a mediation with Francis J. Ortman III, which was scheduled for December 2, 2022.

2 13. From before they filed suit, but especially in the months leading up to mediation,
3 Plaintiff's Counsel conducted a thorough investigation into the relevant facts and legal claims.
4 Plaintiff's Counsel formulated a list of documents and data they would need from Defendants in order
5 to conduct a meaningful mediation. After meeting and conferring with Defense Counsel on this
6 matter, Defendants informally produced substantial amounts of data and documentary evidence to
7 Plaintiff. With this data, Plaintiff's Counsel consulted with an expert in advance of mediation to
8 determine the amount of damages potentially available to Putative Class Members based on the scope
9 of wage and hour violations, assuming Plaintiff successfully established misclassification. Through
10 the efforts of Plaintiff himself, Plaintiff's Counsel was also able to contact various other Contract
11 Carriers, Drivers, and Helpers of Defendants, thus allowing Plaintiff's Counsel to gain a better
12 understanding of the strengths and weaknesses of the case before attending mediation.

13 14. After a full day of mediation, with the extensive efforts and assistance of Mr. Ortman,
14 the Parties were able to reach a settlement in principle on December 2, 2022. Settlement Class
15 Counsel's experience in litigating numerous independent contractor misclassification suits and the
16 documents and data exchanged by the Parties in the lead up to mediation informed Plaintiff's Counsel
17 decision to endorse the \$650,000 gross settlement amount. Although the Parties agreed upon a
18 settlement figure on December 2, 2022, negotiations regarding the specific terms of the agreement
19 continued into May 2023.

20 15. Based on their independent investigation and evaluation, Plaintiff's Counsel are of the
21 opinion that the Settlement with Defendants for the consideration and on the terms set forth in the
22 Settlement Agreement is fair, reasonable, and adequate, and is in the best interests of the Putative
23 Settlement Class Members, in light of all known facts and circumstances, including the risk of
24 significant delay, the risk that if this matter is litigated a class may not be certified by the Court or that
25 it may later be decertified, the risk that Defendants will prevail on their defenses, as well as potential
26 appellate issues.

27 16. Based on the data provided by Defense Counsel and the outreach undertaken by
28 Plaintiff's Counsel, Plaintiff calculates that Contract Carriers were paid approximately \$32.62 per hour

1 while Drivers and Helpers were paid about \$21.25 per hour. Plaintiff further estimates that the average
2 shift length was approximately 10 hours in length. As the flat pay provided to Contract Carriers,
3 Drivers, and Helpers would not account for overtime, Plaintiff estimates that each Contract Carrier,
4 Driver, and Helper experienced approximately two hours of off-the-clock time each day. Moreover,
5 Plaintiff notes that while unpaid minimum wages were a separate cause of action plead in this suit,
6 practically, because the unpaid time was entirely unpaid *overtime*, the unpaid minimum wages are
7 subsumed within the unpaid overtime hours.

8 17. Projected from their base rates, Plaintiff calculated that the overtime rate for Contract
9 Carriers was \$48.93 per hour. Similarly, the overtime rate for Drivers and Helpers was \$31.88 per
10 hour. Across the putative class, Plaintiff's outreach showed that the average Contract Carrier, Driver,
11 and Helper worked on average five days a week. Thus, the average Settlement Class Member had 10
12 hours of unpaid overtime wages per week. In the case of Contract Carriers, this resulted in \$489.30 of
13 unpaid wages, while the analogous amount for Drivers and Helpers was \$318.80.

14 18. The data provided by Defendant shows approximately 4,371 workweeks for Contract
15 Carriers and 11,615 for Drivers and Helpers. Based upon the weekly unpaid wages amount, this
16 results in \$2,138,730.30 in unpaid overtime for Contract Carriers and \$3,702,862 for Drivers and
17 Helpers. For the Settlement Class, the total unpaid wages amount is \$5,841,592.30.

18 19. As to meal and rest break penalties, the Settlement Class Members damages would be
19 based upon their regular rate of pay, not their overtime rate of pay. Thus, for Contract Carriers this
20 figure is \$32.62, and for Drivers and Helpers it is \$21.25 as set forth above. An individual may only
21 receive a single meal break and a single rest break penalty per day. As Defendants did not have any
22 meal and rest break policies in place due to the alleged independent contractor misclassification, and as
23 Settlement Class Members reported constantly being in a state of hurry to Class Counsel to go from
24 delivery to delivery, Plaintiff believes that the violation rate must be at just about 100%.

25 20. Based upon a five-day a week schedule, Contract Carriers would be entitled to \$326.20
26 in weekly meal and rest break penalties. Similarly, Drivers and Helpers would be owed \$212.50 per
27 week in meal and rest break penalties. Based upon Defendants' data, this would amount to
28 \$1,425,820.20 for Contract Carriers for the 4,371 workweeks and \$2,468,187.50 for Drivers and

1 Helpers for the 11,615 workweeks. Combined, Plaintiff estimates the Class's damages for meal and
2 rest break penalties totaled \$3,894,007.07.

3 21. In terms of waiting time penalties, Plaintiff estimates that up to 250 of the Settlement
4 Class Members became former workers for Defendants within the somewhat shorter statutory period
5 reaching back to March 28, 2018, with turnover being much higher among Drivers and Helpers than
6 with Contract Carriers. For Contract Carriers, based on a \$32.62 hourly wage, a ten-hour workday
7 would result in a daily wage of \$358.82 ($[\$32.62 * 8 \text{ hours}] + [\$32.62 * 1.5 \text{ OT premium} * 2 \text{ hours}]$).
8 Multiplied by thirty days, for an estimated 50 Contract Carriers, this amounts to \$538,230.

9 22. For 200 former Drivers and Helpers, based upon a \$21.25 hourly wage, a ten-hour
10 workday results in a daily wage of approximately \$233.76 ($[\$21.25 * 8 \text{ hours}] + [\$21.25 * 1.5 \text{ OT}$
11 $\text{premium} * 2 \text{ hours}]$). Multiplied by thirty days, for an estimated 200 Drivers and Helpers, this
12 amounts to \$1,402,560. For all former Settlement Class Members, the waiting time penalties therefore
13 amount to \$1,940,790.

14 23. In terms of inaccurate wage statement penalties, the statutory period for this claim
15 reaches back one year prior to filing suit, i.e., to March 28, 2020. The 15,986 total workweeks
16 reported by Defendants for Contract Carriers, Drivers, and Helpers reach back to March 17, 2017.
17 Plaintiff estimates that about half of these workweeks would have occurred during the statutory period
18 for this claim, i.e., 7,993 workweeks. Based upon a two-week pay period, Plaintiff estimates that there
19 are therefore approximately 4,000 pay periods subject to the wage statement penalty claim. To
20 simplify the arithmetic, if the \$100 penalty amount from Labor Code Section 226(e) is used for these
21 4,000 pay periods, then the amount owed to the Settlement Class in inaccurate wage statement
22 penalties totals \$400,000.

23 24. The unreimbursed business expense claim in this matter is also significant. The most
24 notable unreimbursed business expenses, e.g., fuel costs, truck leasing costs, and insurance costs,
25 would have been borne by the Contract Carriers as opposed to the Drivers and Helpers. Plaintiff
26 believes Contract Carriers paid approximately \$1,000 for these charges per week that were not
27 adequately compensated for by Defendants in their payments to the Contract Carriers. For 4,371
28 workweeks, this therefore totals \$4,371,000. With Drivers and Helpers, the main unreimbursed

1 business expense would have been for their cell phones. If this amounted to a weekly unreimbursed
2 charge of \$12.50, then for 11,615 workweeks, this figure amounts to \$145,187.50. Altogether then,
3 the Settlement Class's unreimbursed business expense claim is worth approximately \$4,516,187.50.

4 25. Finally, as for the PAGA penalties, the amount at issue would depend on whether this
5 Court would permit the 'stacking' of such penalties. *See Smith v. Lux Retail N. Am., Inc.*, 2013 WL
6 2932243 at *3 (N.D. Cal. June 13, 2013) ("Another necessary but equally flawed assumption
7 undergirding the Luxottica calculation is the stacking of penalties. For the single mistake of failing to
8 include commissions in the overtime base, plaintiff has asserted five (count them, five) separate labor
9 code violations that could lead to statutory penalties.... But is it plausible that we would really pile one
10 penalty on another for a single substantive wrong?"). If the Court did not permit stacking, then the
11 class would be entitled to approximately \$100 per pay period as a maximum for PAGA penalties.

12 26. Plaintiff estimates that of the 15,986 workweeks in the class period, approximately half
13 of them fall within the PAGA period, which goes back to one year prior to the filing of this action.
14 Thus, the approximately 8,000 workweeks in the PAGA period becomes 4,000 pay periods. With a
15 \$100 per pay period violation rate, the PAGA penalties would amount to \$400,000 at the highest end.
16 If the Court did permit stacking, this amount would be many multiples higher.

17 27. As a *theoretical maximum accounting for no discounting*, the Settlement Class could
18 claim \$16,992,576.87 in damages. This is broken down as \$5,841,592.30 in unpaid wages,
19 \$3,894,007.07 in meal and rest break penalties, \$1,940,790 in waiting time penalties, \$400,000 in
20 inaccurate wage statement penalties, \$4,516,187.50 in unreimbursed business expenses, and \$400,000
21 in PAGA penalties.

22 28. The discount applied here between the maximum possible damages and the \$650,000
23 settlement amount is appropriate given the significant hurdles that this case faces if litigated through to
24 trial. First, and most prominently, Plaintiff faces a real risk that he may not be able to establish
25 misclassification. Defendants maintain that Plaintiff and the Contract Carriers, Drivers, and Helpers
26 were properly classified as independent contractors. To that end, Defendants were careful to impart a
27 degree of control to the Contract Carriers to not run afoul of the 'control test' as set forth in *S. G.*
28 *Borello & Sons, Inc. v. Department of Industrial Relations*, 48 Cal.3d 341 (1989). Notably, the

1 *Borello* test is likely applicable to Labor Code claims, most relevantly, to the unreimbursed business
2 expense claim which has no analogue under the wage orders. *See Bowerman v. Field Asset Servs.,*
3 *Inc.*, 60 F.4th 459, 472 (9th Cir. 2023); *Garcia v. Border Transportation Group, LLC*, 28 Cal.App.5th
4 558 (2018).

5 29. California’s ‘ABC test’ would not apply to Drivers and Helpers, because as they never
6 contracted with either Pilot or Best Buy, California’s joint employment test as set forth in *Martinez v.*
7 *Combs*, 49 Cal. 4th 35 (2010), would apply instead. And Pilot would additionally argue that
8 California’s ‘business-to-business’ exemption, Cal. Lab. Code § 2776, would prevent the ‘ABC test’
9 from applying to Contract Carriers, which are organized as formal business entities and often hire their
10 own workers and control significant fleets of trucks.

11 30. Moreover, even under the more favorable standard for determining misclassification
12 that was set forth in *Dynamex Operations West v. Superior Court*, 4 Cal. 5th 903 (2018), Defendants
13 had essentially two years before this suit was filed to conform their operations to that decision and
14 ensure that their operations met the tenets of the ‘ABC’ test. Class Counsel judges that with this case,
15 it would be more difficult to establish misclassification than in other similar cases, as it appears
16 Defendant Pilot in particular was careful to calibrate operations to allow Contract Carriers greater
17 flexibility in their work outside of deliveries for Best Buy, and utilized a business model that directly
18 contracted only with independent and formally-established businesses with their own fleets of trucks.

19 31. In addition, should this case be litigated, Plaintiff anticipates that Defendants will rely
20 on the Federal Motor Carrier Safety Administration’s (“FMCSA”) December 21, 2018 decision, which
21 preempted California’s meal and rest break laws, to defeat those claims in this suit. While Plaintiff
22 would certainly oppose this, the Ninth Circuit has upheld the FMCSA’s December 21, 2018 decision
23 affirming the FMCSA’s preemption of meal and rest break laws. *See Int’l Bhd. of Teamsters, Local*
24 *2785 v. FMCSA*, 986 F.3d 841 (9th Cir. 2021). Thus, barring a change in the law, those claims are
25 subject to 100% discounting independent of the threshold classification issue.

26 32. Finally, and perhaps most importantly, liability aside, Plaintiff runs the very real risk of
27 not being able to secure class certification on a contested motion. While Plaintiff contends that
28 Settlement Class Members were misclassified, it is nevertheless true that the way each Contract Carrier

1 conducted operations, including from the Drivers and Helpers it formally employed, varied to an extent
2 between them. For the Contract Carriers themselves, the nature of their work was less consistent than
3 with Drivers and Helpers. Thus, even if most or all of the Contract Carriers, Drivers, and Helpers can
4 be said to have been misclassified, whether class certification outside of the settlement context under
5 Rule 23 would be granted is a very different question. Thus, while the \$650,000 gross settlement
6 amount appears at first glance to be a substantial discount on the maximum damages available. Given
7 the risks of this particular suit, the amount is extremely reasonable and results in a good settlement for
8 the putative class.

9 33. Plaintiff is aware of one other suit that could potentially be affected by the instant
10 settlement. That suit is entitled *David Venegas, et al. v. Pilot Air Freight, LLC, et al.*, Los Angeles
11 County Superior Court Case No. 22STCV14263. The *Venegas* action had a broader class definition
12 than this matter involving all workers who drove for Pilot in California with respect to any of Pilot's
13 customers (not just Best Buy). The *Venegas* action was filed on April 28, 2022, several months after
14 this matter was initiated on September 23, 2021. However, *Venegas* was compelled to individual
15 arbitration and the PAGA representative claims dismissed on February 10, 2023. Thus, while *Venegas*
16 initially appeared to overlap with this matter to some extent, the *Venegas* case is now an individual
17 action.

18 34. The settlement funds will be allocated based upon the number of workweeks that
19 Settlement Class Members worked in the statutory period. Settlement Agreement, ¶ IV(J). While
20 there are differences in damages between Contract Carriers on the one hand, and Drivers and Helpers
21 on the other, Class Counsel believes unified allocation plan is fair and reasonable because while the
22 damages are higher for the Contract Carriers, liability and class certification would be more difficult to
23 establish on behalf of the Contract Carriers.

24 35. No claim form is required. However, the settlement does provide for a Claimant
25 Information Form. The Claimant Information Form will be used to allow Settlement Class Members
26 to provide their tax identification number to the Settlement Administrator. Settlement Agreement, ¶
27 IV(J). Because Defendants do not have the tax identification number for all Settlement Class Members
28 (as they did not directly contract with all Settlement Class Members), the Parties will encourage

1 Settlement Class Members to submit this form to the Settlement Administrator to ensure that they can
2 receive payment.

3 36. The notice distribution plan is effective because it is the least burdensome process under
4 the circumstances. Class Members will be notified of the settlement via First Class U.S. Mail.
5 Settlement Agreement, ¶ IV(C). Importantly, this is not a claims-made settlement. However,
6 Settlement Class Members are strongly encouraged to submit Payment Information Forms where they
7 can provide their tax identification number. The Parties set up this process because Defendants do not
8 have the tax identification number for all Settlement Class Members. By requesting, but not requiring,
9 that all Settlement Class Members return the Payment Information Form, Plaintiff believes that the
10 number of Settlement Class Members who will be able to receive a settlement check will be
11 maximized.

12 37. Plaintiff is submitting notice of this settlement and the Motion for Preliminary Approval
13 with California's Labor and Workforce Development Agency contemporaneously with the filing of
14 this Motion.

15 38. In preparation for and during the mediation, the Parties apprised the other of their
16 respective factual contentions, legal theories and defenses. Consequently, extensive and informed,
17 arms-length negotiations occurred during the full-day mediation session with experienced mediator,
18 Francis J. Ortman III, Esq. The mediation was held on December 2, 2022. The Parties were able to
19 reach a Settlement that was based upon the mediator's advice and guidance, Class Counsel's
20 experience in litigating numerous independent contractor misclassification suits, and the exchange of
21 information by the Parties in the lead up to mediation. Although the Parties agreed upon a settlement
22 figure on December 2, 2022, negotiations regarding the specific terms of the agreement continued into
23 May 2023.

24 39. Plaintiff alleges that Defendants improperly misclassified the Putative Class Members
25 as independent contractors exempt from minimum wage, overtime, meal and rest period laws, and the
26 wider protections of the California Labor Code and wage orders. Although Plaintiff believes they have
27 a strong case, further litigation carries numerous risks and obstacles for Plaintiff and Putative Class
28 Members, as described below.

1 40. First, Plaintiff may not be able to certify the Putative Class under Rule 23(b). Plaintiff
2 largely relies on the Defendants' uniform business practices that treat the Putative Class Members as
3 non-employees or independent contractors to establish both commonality and predominance. Plaintiff
4 will also argue that other common issues also predominate, such as whether the job expectations and
5 degree of control exercised by Defendants upon the Contract Carriers, Drivers, and Helpers are
6 uniform across the Class.

7 41. Even if Plaintiff can show that Contract Carriers, Drivers, and Helpers were not
8 independent contractors, Defendants can assert numerous defenses regarding liability and damages.
9 For instance, Defendants contend that the Contract Carriers with which they contracted to perform
10 delivery services employed Drivers and Helpers, creating both a conflict within the class if pursued,
11 and also shifting liability away from Defendants.

12 42. With regard to Plaintiff's claims for wage statement and waiting time penalties, both
13 claims are derivative of Plaintiff's primary wage claims. Thus, Plaintiff would recover nothing for
14 himself, or the Class, if the underlying claims are unsuccessful.

15 43. The Defendants' positions in this litigation may result in no recovery for Plaintiff and
16 the Putative Class Members, or protracted appeals and significant risks to meaningful recovery for the
17 Putative Class Members. Consequently, the benefits of the settlement greatly outweigh the risks of
18 continuing to litigate the issues in this case.

19 44. The Settlement is fair, adequate, and well within the range of possible approval.
20 Without conceding that any adverse rulings would be justified, Plaintiff recognizes the risk of such
21 outcomes as described above. If Defendants were able to prove that the Putative Settlement Class
22 Members are not employees or properly classified as independent contractors, then the value of the
23 case would be zero. All of Plaintiff's claims and damages rely upon this threshold issue.

24 45. If Plaintiff is able to demonstrate that Contract Carriers, Drivers, and Helpers are
25 employees, not independent contractors, then the value of Plaintiff's claims depend principally on the
26 number of hours worked by Putative Class Members, the frequency at which meal and rest breaks were
27 missed (and the application of FMCSA preemption), unreimbursed business expenses, and derivative
28 penalties. Plaintiff calculates damages as ranging from \$0, if he cannot prevail on the threshold

1 independent contractor versus employee issue, to approximately \$16,992,576.87, if Plaintiff is able to
2 secure class certification and prevail on all claims.

3 46. In order to properly value the claims at issue, however, these figures must be reduced
4 according to the likelihood that Plaintiff will prevail on his motion for class certification. Moreover,
5 even if class certification is granted, the figures must be further be reduced according to the likelihood
6 that Plaintiff will ultimately be able to prevail on the merits. As set forth above, for the purposes of
7 settlement only, Plaintiff acknowledges that this case may face significant hurdles at both the
8 certification and the liability phases of the litigation.

9 47. Based on the foregoing, the Settlement will result in a fair and reasonable award to
10 Settlement Class Members in light of the litigation risks. The net amount of the \$650,000 to be paid to
11 the Class under the proposed Settlement (after payment of Class Counsel's attorneys' fees [\$214,500],
12 litigation costs [\$20,000], Settlement Administration Costs [\$12,550], the Class Representative
13 Enhancement [\$10,000], and LWDA portion of the PAGA allocation [\$24,375]), will be at least
14 \$368,575. For the 567 Putative Class Members, the payout under this amount would be approximately
15 \$650. Thus, the Settlement avoids the risks of litigation while ensuring that Settlement Class Members
16 receive substantial consideration for a release of their claims. The Settlement also affords relief to
17 Settlement Class Members who likely would not have pursued individual claims.

18 48. The Settlement provides that, prior to the final approval hearing, Class Counsel may
19 petition the Court for an award of fees and litigant expenses. However, the Settlement does not
20 specifically set forth an amount for the attorneys' fees and costs that Class Counsel may seek.
21 Nevertheless, Class Counsel does not intend to seek fees in excess of 33% of the \$650,000 gross
22 settlement, i.e., \$214,500. Similarly, Class Counsel does not intend to seek litigant expenses in excess
23 of \$20,000.

24 49. Plaintiff Christian Matute initiated this case and sought counsel to represent the
25 proposed Class. Plaintiff met with Settlement Class Counsel and provided documentary evidence
26 relevant to the claims in the case. Plaintiff also risked his own professional reputation by suing his
27 alleged former employer. Any potential future employer who searches the internet or runs a
28 background check on Plaintiff will discover this fact. In a competitive job market, this factor may

1 weigh heavily against him. Therefore, Plaintiff has also undertaken risks with respect to his future
2 employment prospects that other Settlement Class Members simply have not.

3 50. Plaintiff proposes appointing ILYM Group, Inc. (“ILYM”) as the Settlement
4 Administrator in this case. Settlement Class Counsel has elected to use ILYM given their substantial
5 and longstanding experience in the field of class action settlement administration. Moreover, ILYM
6 has provided a very reasonable bid of \$12,550. A true and correct copy of the proposal provided by
7 ILYM Group, Inc. is attached hereto as **Exhibit “2”**.

8 51. The Settlement Administration Costs will be paid from the Gross Settlement Amount.
9 The estimate from ILYM provides that the settlement administration costs will be approximately
10 \$12,550. The final settlement costs and supporting documentation will be submitted to the Court prior
11 to the final approval hearing. The Settlement Administration Costs here are reasonable as compared to
12 the value of the settlement and the work that needs to be performed to administer the Settlement
13 properly.

14 52. The settlement reached by the Parties is eminently fair, reasonable, adequate, and an
15 excellent result for Settlement Class Members. For these reasons, the Court should grant preliminary
16 approval of the proposed settlement

17 I declare under penalty of perjury that under the laws of the State of California and the United
18 States of America that the foregoing is true and correct.

19 Executed on May 16, 2023, in Glendale, California.

20
21 /s/ Armand R. Kizirian
Armand R. Kizirian
22
23
24
25
26
27
28

Exhibit “1”

BOYAMIAN LAW, INC.
MICHAEL H. BOYAMIAN, SBN 256107
michael@boyamianlaw.com
ARMAND R. KIZIRIAN, SBN 293992
armand@boyamianlaw.com
550 North Brand Boulevard, Suite 1500
Glendale, CA 91203
Phone: 818.547.5300
Fax: 818.547.5678

Attorneys for Plaintiff Christian Matute

GIBSON, DUNN & CRUTCHER LLP
DHANANJAY S. MANTHRIPRAGADA, SBN 254433
dmanthripragada@gibsondunn.com
THOMAS F. COCHRANE, SBN 318635
tcochrane@gibsondunn.com
333 South Grand Avenue
Los Angeles, CA 90071
Phone: 213.229.7000

*Attorneys for Defendant Pilot Air Freight,
LLC dba Pilot Freight Services*

(Additional Counsel Listed on Following Page)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHRISTIAN MATUTE, an individual;
Individually and on Behalf of All Similarly
Situated Individuals,

Plaintiff,

v.

PILOT AIR FREIGHT LLC dba PILOT
FREIGHT SERVICES, a Pennsylvania Limited
Liability Company; BEST BUY CO., INC., a
Minnesota Corporation; and DOES 1 through
25, Inclusive,

Defendants.

CASE NO. 4:22-cv-00587-YGR

**STIPULATION OF CLASS ACTION
SETTLEMENT**

Action Filed: November 5, 2021

Honorable Judge Yvonne Gonzalez Rogers

SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, P.C.
CHRISTOPHER C. McNATT, JR., SBN 174559

cmcnatt@scopelitis.com
2 North Lake Avenue, Suite 560
Pasadena, CA 91101
Phone: 626.795.4700
Fax: 626.795.4790

SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, P.C.
ANDREW J. BUTCHER, *pro hac vice*

abutcher@scopelitis.com
30 West Monroe St., Suite 1600
Chicago, IL 60603
Phone: 312.255.7200
Fax: 312.422.1224

SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, P.C.
ANGELA S. CASH, *pro hac vice*

acash@scopelitis.com
JAMES A. ECKHART, SBN 321101
jeckhart@scopelitis.com
10 West Market Street, Suite 1400
Indianapolis, IN 46204
Phone: 317.637.1777
Fax: 317.687.2414

Attorneys for Defendant Pilot Air Freight, LLC dba Pilot Freight Services

MORGAN, LEWIS & BOCKIUS LLP
BARBARA J. MILLER, SBN 167223

barbara.miller@morganlewis.com
KIMBERLI A. WILLIAMS, SBN 318741
kimberli.williams@morganlewis.com
CHRISTOPHER J. TAYLOR, SBN 292369
christopher.taylor@morganlewis.com
TAYLOR D. HORN, SBN 329435
taylor.horn@morganlewis.com
600 Anton Blvd., Suite 1800
Costa Mesa, CA 92626
Phone: 714.830.0600
Fax: 714.830.0700

Attorneys for Defendant Best Buy Co., Inc.

I. INTRODUCTION AND SUMMARY OF SETTLEMENT TERMS

This action was brought by Plaintiff Christian Matute (“Plaintiff”), individually and on behalf of all current and former individuals who performed delivery services for Pilot Air Freight LLC dba Pilot Freight Services and/or DSI Logistics, Inc. (“Pilot”) and Best Buy Co., Inc. (“Best Buy”) (collectively, “Defendants”) as contract carriers, drivers, and/or helpers in the state of California during the Class Period, as defined below. In his First Amended Complaint, Plaintiff alleges causes of action against Defendants for (1) failure to pay minimum wage, (2) failure to pay overtime compensation, (3) reimbursement of employment expenses, (4) unlawful deduction from wages, (5) failure to provide meal periods, (6) failure to authorize and permit rest periods, (7) failure to furnish accurate wage statements, (8) waiting time penalties, (9) unfair competition, and (10) violation of the Private Attorneys’ General Act (Labor Code § 2698 et seq.).

On December 2, 2022, Plaintiff and Defendants participated in mediation before Tripper Ortman. The mediation was a successful, arms-length negotiation, and resulted in the parties agreeing to resolve all claims through this Settlement.

Under the terms of the Settlement and after final approval and entry of judgment, Pilot will pay an all-inclusive gross settlement amount of six hundred and fifty thousand dollars (\$650,000) (“Gross Settlement Amount”). The Settlement will be administered by a third-party settlement administrator with experience administering class action settlements of this type. Until distribution, the Gross Settlement Amount will be held in a Qualified Settlement Fund established by the Settlement Administrator. Settlement Group Members (as defined in Section II) will release all Released Claims (as defined in Section II) unless they opt-out of the Settlement.

II. DEFINITIONS

As used in this Stipulation, the following terms shall have the meanings set forth below:

A. “Action” means this putative class and representative action pending in the United States District Court for the Northern District of California titled *Christian Matute v. Pilot Air Freight, LLC, et al.*, Case Number 22-cv-00587-TSH.

B. “Agreement” or “Stipulation” means this Stipulation of Class Action Settlement.

C. “Settlement Class” means (a) all individuals who provided services for Pilot and Best Buy (as those entities are defined below) as contract carriers, drivers and/or helpers in the State of California and (b) all entities owned and controlled by contract carriers which contracted directly with Pilot and provided delivery services for Best Buy (as those entities are defined below) from March 28, 2017 through the date of preliminary approval of the Settlement. However, the Settlement Class shall exclude all individuals and entities who provided delivery services for Best Buy (as those entities are defined below) as contract carriers, drivers and/or helpers in the State of California exclusively prior to April 18, 2019 and who previously released claims through that date via the settlement in *Henriquez v. DSI Logistics, Inc.*, Los Angeles Sup. Ct. No. BC714165 (final approval granted Nov. 25, 2019).

D. “Settlement Class Counsel” means Michael H. Boyamian and Armand R. Kizirian of Boyamian Law, Inc., 550 North Brand Boulevard, Suite 1500, Glendale, CA 91203, (818) 547-5300.

E. “Settlement Class Counsel’s Attorneys’ Fees” means the amount to be paid to Settlement Class Counsel for attorneys’ fees, subject to Court approval at the Final Fairness and Approval Hearing.

F. “Settlement Class Counsel’s Costs” means the amount to be reimbursed to Settlement Class Counsel for their reasonable costs and expenses incurred in the Action, subject to Court approval at the Final Fairness and Approval Hearing.

G. “Settlement Class Data” means information regarding Settlement Class Members that Defendants will in good faith compile from their records and provide to the Settlement Administrator, solely for purposes of the Settlement Administrator’s administration of the settlement, and for no other purpose. Settlement Class Data shall include, if known, for each Settlement Class Member: full name, last known address, social security number and/or tax identification number, email address, and the number of Qualifying Workweeks each Settlement Class Member worked during the Settlement Class Period, based on Defendants’ records.

H. “Settlement Class Member” is a person or entity who is a member of the Settlement Class.

I. “Settlement Class Period” means the period from March 28, 2017 through the date the Court grants preliminary approval of this Settlement.

J. “Complaint” means the First Amended Complaint on file in the Action.

K. “Court” means the United States District Court for the Northern District of California, where the Action is pending.

L. “Counsel for Pilot” means Dhananjay Manthripragada and Thomas Cochrane of Gibson, Dunn & Crutcher, LLP, 333 South Grand Avenue, Los Angeles, California 90071, (213) 229-7000, and Christopher C. McNatt, Andrew J. Butcher, Angela S. Cash, and James A. Eckhart of Scopelitis, Garvin, Light, Hanson & Feary, P.C., 2 North Lake Avenue, Suite 560, Pasadena, California 91101, (626) 795-4700.

M. “Counsel for Best Buy” means Barbara J. Miller, Kimberli A. Williams, Christopher J. Taylor, and Taylor D. Horn of Morgan, Lewis & Bockius LLP, 600 Anton Boulevard, Suite 1800, Costa Mesa, California 92626, (714) 830-0600.

N. “Defendants’ Counsel” means counsel for Pilot and counsel for Best Buy, as defined above.

O. “Pilot” means and includes Defendant Pilot Air Freight LLC dba Pilot Freight Services, and its parents, owners, predecessors, successors, assigns, subsidiaries, and affiliates (including but not limited to DSI Logistics, Inc.), and each of its and their past, present, and future officers, directors, trustees, agents, and/or employees.

P. “Best Buy” means and includes Defendant Best Buy Co., Inc. and its parents, owners, predecessors, successors, assigns, subsidiaries, and affiliates, and each of its and their past, present, and future officers, directors, trustees, agents, and/or employees.

Q. “Effective Date” means the date of entry of a final judgment which grants final approval of this Settlement, if no Objection to Settlement is filed and Plaintiff and Class Counsel waive their rights to appeal the final judgment. If a timely Objection to Settlement is filed, Plaintiff and Class Counsel do not waive their rights to appeal the final judgment, and/or if another party appeals the final judgment, “Effective Date” shall be the later of: (a) the date on which the time for all appeals relating

1 to the Settlement and the Final Approval Order has expired; or (b) if an appeal, review or writ is sought,
2 the date on which the highest reviewing court renders its decision denying any appeal or petition (where
3 the immediately lower court affirmed the final judgment) or affirming the final judgment or the date of
4 final dismissal with prejudice of the last pending appeal from the Final Approval Order.

5 R. “Qualified Settlement Fund” or “QSF” mean a federally insured bank account to be
6 established by the Settlement Administrator into which all payments from Defendants related to this
7 Settlement will be deposited and from which all payments authorized by the Court will be made. The
8 QSF will be established prior to Pilot’s deposit of the Gross Settlement Amount.

9 S. “Final Approval Order” means the Order Granting Final Approval of Class Action
10 Settlement and Judgment entered by the Court.

11 T. “Final Fairness and Approval Hearing” means the hearing on Plaintiff’s Motion for
12 Final Approval of Class Action Settlement at which the Court will be asked to give final approval to
13 the settlement terms set forth herein and to enter judgment.

14 U. “Gross Settlement Amount” means the all-in, non-reversionary sum of six hundred fifty
15 thousand dollars (\$650,000) which Pilot will pay under this Settlement. The Gross Settlement Amount
16 will be paid on an all-in, common fund, non-reversionary basis, and includes all compensation to be
17 paid by Pilot to effectuate the Settlement.

18 V. “Net Settlement Amount” means the amount remaining from the Gross Settlement
19 Amount after payments of Court-approved Settlement Class Counsel’s Attorney’s Fees and Settlement
20 Class Counsel’s Costs, Service and Release Award to the Representative Plaintiff, Settlement
21 Administration Costs, and payment to the LWDA.

22 W. “Individual Settlement Payment” means the amount payable from the Net Settlement
23 Amount to each Settlement Group Member. The Individual Settlement Payment shall be calculated
24 pursuant to Section IV herein.

25 X. “Notice of Settlement” means the “Notice of Proposed Class Action Settlement and
26 Final Approval Hearing,” the form of which is attached hereto as Exhibit A.

27 ///

Y. “Payment Information Form” means the document included in the Notice of Settlement, the form of which is attached hereto as Exhibit B. The Payment Information Form shall be provided to each Settlement Class Member with the Notice of Settlement and shall inform the Settlement Class Member of the number of Qualifying Workweeks as reflected for the Settlement Class Member in the Settlement Class Data, and shall estimate the Settlement Class Member’s share of the Net Settlement Fund based on the allocation plan set forth in this Stipulation. If signed by a Settlement Group Member and timely and validly submitted to the Settlement Administrator, a Payment Information Form shall confirm that Settlement Group Member’s consent to release FLSA claims through this settlement pursuant to 29 U.S.C. § 216(b), but the Settlement shall effect a full and complete release of all claims under the FLSA based on or reasonably related to the claims asserted in this Action regardless of a Settlement group Member’s submission of a Payment Information Form.

Z. “Objection to Settlement” means any timely written objection to this Settlement sent by a Settlement Class Member to the Settlement Administrator as specified herein and in the Notice of Settlement. Any Objection to Settlement must be sent to the Settlement Administrator within the time limitations set forth in this Stipulation.

AA. “Parties” means the Plaintiff on behalf of himself and all Settlement Class Members and Defendants.

BB. “Preliminary Approval Date” is the date the Court grants preliminary approval of this Settlement.

CC. “Qualifying Workweeks” means a week during the Settlement Class Period during which a Settlement Class Member provided services at least one day or more as a helper, driver, or independent hauler for both Pilot and Best Buy (as those entities are defined herein) including any week credited to a Settlement Class Member as set forth below, except for weeks for which the Settlement Class Member previously released claims via the settlement in *Henriquez v. DSI Logistics, Inc.*, Los Angeles Sup. Ct. No. BC714165 (final approval granted Nov. 25, 2019).

DD. “Released Claims” means any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees, damages, action or causes of action, and liabilities of any

nature whatsoever, whenever incurred, including costs, expenses, penalties, and attorneys' fees, known or unknown, suspected or unsuspected, in law or equity, that Plaintiff and/or any Settlement Class Member, had or now has, against Pilot and/or Best Buy (as those entities are defined herein) that arise from or are reasonably related to the conduct alleged in the First Amended Complaint, including but not limited to any and all claims pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.*; California Labor Code sections 132a, 201-204, 206.5, 207, 208, 210-214, 216, 218, 218.5, 218.6, 221-224, 225.5, 226, 226.3, 226.7, 226.8, 227, 227.3, 245-249, 351, 353, 432.4, 432.5, 450, 510-512, 551-552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 2753, 2802, 2804, 3700 *et seq.*, and 4553 *et seq.*; the Private Attorneys General Act ("PAGA"), California Labor Code section 2698 *et seq.*; California Code of Civil Procedure section 1021.5; California Code of Regulations, title 8, sections 11010 and 11040; Industrial Welfare Commission Wage Orders; California Business and Professions Code sections 17200 *et seq.*; and any other similar municipal code or ordinance, state, federal, or common law, for unpaid wages, minimum wages, regular wages, overtime wages, expense reimbursement, wage statements, payroll recordkeeping, reporting time, improper deduction of wages, failure to provide workers' compensation insurance, meal periods, rest breaks, sick leave, final pay, penalties for timely payment of wages upon discharge, waiting time penalties, PAGA penalties, unfair business practices, all claims arising out of or relating to the statutory causes of action described herein, restitution, interest, costs and expenses, attorneys' fees, declaratory relief, injunctive relief, liquidated damages, exemplary or punitive damages, civil penalties, equitable remedies, and/or pre- or post-judgment interest at any time during the Settlement Class Period. Released Claims include all such claims regardless of whether they are known or unknown, suspected or unsuspected, and shall run from March 28, 2017 through the Preliminary Approval Date.

EE. "Released Parties" means Pilot and Best Buy, as those entities are defined herein.

FF. "Representative Plaintiff" means Christian Matute.

GG. "Request for Exclusion" or "Opt-Out Request" mean a written and signed request by a Settlement Class Member to be excluded from the Settlement Class that is submitted in accordance with the procedure set forth herein.

1 HH. "Service and Release Award" means the payment to be made to the Representative
2 Plaintiff for his service to the Settlement Class and for the broader general release that he is providing
3 to Defendants, which is in addition to whatever payment he otherwise would be entitled to receive as
4 a Settlement Class Member. The Service and Release Award is subject to Court approval.

5 II. "Settlement" means the disposition of the Action and all related claims effectuated by
6 this Agreement.

7 JJ. "Settlement Administration Costs" means the fees and costs incurred or charged by the
8 Settlement Administrator in connection with the execution of its duties under this Agreement including,
9 but not limited to fees and costs associated with: (1) establishing and maintaining the QSF; (2)
10 preparing, issuing and/or monitoring reports, filings, and notices (including the cost of printing and
11 mailing all notices and other documents to the Settlement Class Members) required to be prepared in
12 the course of administering the Settlement; (3) computing the amount of the settlement payments, taxes,
13 and any other payments to be made under this Agreement; (4) handling inquiries about the calculation
14 of individual settlement payments; (5) establishing and operating a settlement payment center website,
15 address, and phone number to receive Settlement Class Members' inquiries about the Settlement; (6)
16 providing a due diligence declaration for submission to the Court prior to the final approval hearing;
17 (7) printing and providing Settlement Class Members and the Plaintiff with 1099 forms as required
18 under this Agreement and applicable law; (8) preparing, issuing, and filing any tax documents or filings
19 required by any governmental taxing authority or other governmental agency; and (9) any other tasks
20 as the Parties mutually agree or the Court orders the Settlement Administrator to perform. Court-
21 approved Settlement Administration Costs will be paid out of the Gross Settlement Amount.

22 KK. "Settlement Administrator" refers to ILYM Group, Inc.

23 LL. "Settlement Group" means all Settlement Class Members who have not timely
24 submitted a valid and complete Request for Exclusion.

25 MM. "Settlement Group Member" is a person who is a member of the Settlement Group.

26 ///

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III. BACKGROUND

It is agreed by and among the Parties that the Action, including any and all allegations in the First Amended Complaint and any and all claims, damages, remedies sought or causes of action alleged in the First Amended Complaint or that could have been alleged based on the factual allegations of the First Amended Complaint, shall be settled and compromised as between the Settlement Group and Defendants, as well as between the California Labor and Workforce Development Agency in connection with the claims asserted under California Labor Code section 2698 *et seq.*, subject to the terms and conditions set forth in this Stipulation of Class Action Settlement and the approval of the Court.

IV. SETTLEMENT APPROVAL AND IMPLEMENTATION PROCEDURE

A. Preliminary Approval of Settlement

Once finalized, the Parties shall promptly submit this Stipulation of Settlement to the Court for preliminary approval and determination by the Court as to its fairness, adequacy, and reasonableness. Within 21 days after the execution of this Settlement Stipulation, or by another deadline ordered by the Court, Settlement Class Counsel will file a Motion for Preliminary Approval seeking an order:

- (a) Granting preliminary approval of the proposed settlement as fair, reasonable, and adequate as to Settlement Group Members;
- (b) Granting approval as to form and content of the proposed Notice of Settlement;
- (c) Granting approval of the plan of allocation of the Gross Settlement Fund;
- (d) Directing the mailing of the Notice of Settlement by first-class mail to Settlement Class Members by the Settlement Administrator;
- (e) Conditionally certifying the Settlement Class for settlement purposes only;

///

1 (f) Appointing Settlement Class Counsel, Plaintiff as Settlement Class
2 representative, and ILYM Group, Inc. as Settlement Administrator; and

3 (g) Scheduling a Final Fairness Hearing for a determination as to whether
4 the proposed settlement should be finally approved.

5 At the time Settlement Class Counsel files the Motion for Preliminary Approval, Settlement
6 Class Counsel will submit this Settlement Stipulation to the LWDA. *See* Cal. Lab. Code § 2699(l)(2).
7 Defendants will ensure that notice of this Settlement Stipulation is timely submitted to the appropriate
8 Federal and State officials pursuant to 28 U.S.C. § 1715.

9 The Parties have agreed to the certification of the Settlement Class for the sole purposes of
10 effectuating this Settlement. Should the Settlement be terminated for any reason, or should the
11 Settlement not be approved by the Court or the judgment not become final, the fact that the Parties
12 were willing to stipulate to class certification as part of the Settlement will have no bearing on, and will
13 not be admissible in connection with, the issue of whether a class should be certified in a non-settlement
14 context in this Action, and in any of those events, Defendants expressly reserve the right to oppose
15 class certification. Additionally, if the Settlement does not become final, this Agreement and all
16 negotiations, court orders, and proceedings related thereto shall be without prejudice to the rights of all
17 Parties hereto, and evidence relating to the Agreement and all negotiations shall not be admissible in
18 the Action or otherwise. The Parties further agree that if, for any reason, the Settlement is not approved,
19 the certification for purposes of this Settlement will have no force or effect and will be immediately
20 revoked.

21 Should the Court decline to conditionally certify the Settlement Class or to preliminarily
22 approve all material aspects of the Settlement, the Settlement will be null, and void and the Parties will
23 have no further obligations under it.

24 If the Court grants preliminary approval but does not grant final approval of the Settlement,
25 then the preliminary approval order shall be vacated in its entirety, unless the Court orders otherwise.

26 ///

27 ///

1 **B. Cooperation**

2 The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement,
3 including but not limited to taking any reasonably necessary actions to implement the terms of this
4 Agreement. No party, nor any of its attorneys or agents, shall solicit or encourage any Settlement Class
5 Member to opt out of or object to the Settlement.

6 **C. Notice of Settlement**

7 Within sixty (60) days of the Preliminary Approval Date, but subject to the Settlement
8 Administrator providing adequate and contractual assurances with respect to confidentiality and data
9 security, Defendants shall provide the Settlement Administrator with the Settlement Class Data. This
10 information will remain confidential and will not be disclosed to anyone, except as required to
11 applicable taxing authorities, pursuant to Defendants' express written authorization, by order of the
12 Court, or as otherwise provided for in this Agreement. The Settlement Class Data shall be used only
13 for the purpose of administering this Settlement Stipulation.

14 Using the Settlement Class Data, the Settlement Administrator will: (1) confirm and inform
15 the number of Settlement Class Members, (2) finalize and print the Notice of Settlement; (3) check all
16 addresses against the National Change of Address database; and (4) within fourteen (14) calendar days
17 of receiving the Settlement Class Data, send to each Settlement Class Member via First-Class United
18 States mail an English and Spanish version of the Notice of Settlement to the most recent address
19 known for each Settlement Class Member. It will be conclusively presumed that if an envelope so
20 mailed has not been returned within fifteen (15) calendar days of the mailing, the Settlement Class
21 Member received the Notice of Settlement.

22 Any individual who did not receive the Notice of the Settlement seeking to be included in the
23 Settlement shall provide the Settlement Administrator with their full name, date of birth, Social
24 Security number or tax identification number, the name of the contract carrier that the individual
25 worked for (if any), and written proof of their provision of services to Defendants during the Settlement
26 Class Period, with as much detail as feasible, such as dates of work, to assist the Parties with
27 establishing the individual's status as a Settlement Class Member. Upon receipt of the written proof
28

1 from such an individual, Pilot will make a good-faith effort to promptly confirm their work dates, and
2 will promptly provide such information to the Settlement Administrator. To the extent necessary to
3 resolve disputes regarding the validation process, the Parties agree to meet and confer in good faith.
4 The Settlement Administrator, advised by the Parties, will determine whether each such individual is
5 to be treated as a Settlement Class Member.

6 **D. Re-Sending Settlement Class Notices**

7 In the event that Defendants' Counsel or Settlement Class Counsel becomes aware of new
8 addresses for any Settlement Class Member, prior to the filing of the motion for final approval, such
9 information must be communicated to the Settlement Administrator. The Settlement Administrator
10 will then re-send a Notice of Settlement to the Settlement Class Member(s) at the new address.

11 For any Notice of Settlement that is returned as undeliverable, the Settlement Administrator
12 will perform a utility database search or other skip trace. The returned Notices of Settlement will be
13 re-mailed to the new addresses obtained for such Settlement Class Members. Such searching and re-
14 mailing will be completed within fifteen (15) days of the date that Notices of Settlement were originally
15 returned as undeliverable. Notwithstanding anything to the contrary in this Stipulation and absent
16 approval from the Parties, through their counsel, any Notice of Settlement that is mailed or re-mailed
17 after the original mailing date will provide for a response deadline that is no later than ten (10) days
18 prior to the Final Fairness and Approval Hearing even if such date is less than 60 days from the date of
19 mailing or re-mailing. It will be conclusively presumed that if an envelope so re-mailed has not been
20 returned within fifteen (15) days of re-mailing, the Settlement Class Member received the Notice of
21 Settlement.

22 **E. Requests for Exclusion (Opt-Outs)**

23 Any Settlement Class Member who wishes to be excluded from the Settlement must notify the
24 Settlement Administrator in writing of his or her desire to be excluded by mailing his or her own written
25 statement to the Settlement Administrator that clearly expresses such desire and is signed by such
26 Settlement Class Member. Any such statement shall include the Settlement Class Member's name
27 (and former names, if any), current address, telephone number, and last four numbers of the Settlement
28

1 Class Member's social security number. To be valid, the Request for Exclusion must (1) include a
2 clear statement of intention to be excluded from the settlement; (2) include the full name, address,
3 telephone number, and last four digits of the Social Security Number of the Settlement Class Member
4 requesting exclusion; (3) be signed by the Settlement Class Member; (4) be returned by U.S. Mail to
5 the Settlement Administrator at the specified address; and (5) be postmarked no later than sixty (60)
6 days after the original date of the Settlement Administrator's mailing of the Notice of Settlement or re-
7 mailing for Settlement Class Members whose Notices of Settlement were re-mailed, provided,
8 however, for any Notice of Settlement that is mailed or re-mailed after the original mailing date the
9 deadline to request exclusion will be no later than ten (10) days prior to the Final Fairness and Approval
10 Hearing even if such date is less than 60 days from the date of mailing or re-mailing. Any disputes
11 regarding the timeliness, validity or effectiveness of a Request for Exclusion shall be decided by the
12 Settlement Administrator, with the Parties' input, if appropriate. The date of the postmark on the
13 mailing envelope for any Request for Exclusion shall be the exclusive means used to determine whether
14 the Request for Exclusion has been timely submitted.

15 Any Settlement Class Member who submits a valid and timely request to be excluded from the
16 Settlement shall be barred from participating in this Settlement, shall be barred from objecting to this
17 Settlement, and shall receive no benefit from this Settlement, provided, however, that regardless of
18 whether any Settlement Class Member timely submits a Request for Exclusion from the Settlement, all
19 Settlement Class Members will still be bound by the settlement and release of any PAGA Claims upon
20 Final Judgment pursuant to *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), and shall receive a pro
21 rata portion of the PAGA Payment allocated for Settlement Class Member distribution. For the
22 avoidance of doubt, Requests for Exclusion do not apply to PAGA Claims, and will not be effective to
23 preclude the release of PAGA Claims. In furtherance of the foregoing, any Settlement Class Member
24 who submits a valid and timely request to be excluded from the Settlement shall be deemed to have
25 waived all objections and opposition to the fairness, reasonableness, and adequacy of this Settlement,
26 except as to the settlement's release of PAGA Claims.

27 Any Settlement Class Member who fails to submit a timely, complete, and valid Request for
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1 Exclusion shall be barred from opting out of the Settlement and shall be a Settlement Group Member.
2 It shall be conclusively presumed that, if a Request for Exclusion is not postmarked on or before the
3 expiration of the period to submit a Request for Exclusion, the Settlement Class Member did not make
4 the request in a timely manner. Under no circumstances shall the Settlement Administrator have the
5 authority to extend the deadline for Settlement Class Members to file a Request for Exclusion. The
6 Settlement Administrator shall promptly provide Settlement Class Counsel and Defendants' Counsel
7 with copies of all Requests for Exclusion that it receives.

8 Unless a Settlement Class Member submits a timely, complete, and valid Request for Exclusion,
9 he or she shall be deemed a Settlement Group Member and shall be bound by the terms and conditions
10 of this Agreement. The releases provided for in this Agreement shall conclusively preclude any
11 Settlement Group Member from asserting any of the Released Claims against any of the Released
12 Parties in any judicial, administrative, or arbitral forum. Notwithstanding the submission of a timely
13 request for exclusion from the Settlement, Settlement Class Members will still be bound by the
14 settlement and release of any PAGA Claims upon Final Judgment pursuant to *Arias v. Superior Court*,
15 46 Cal. 4th 969 (2009).

16 **F. Declaration of Compliance**

17 As soon as practicable following the Preliminary Approval Date, and at least twenty-one (21)
18 days before the Final Approval Hearing, the Settlement Administrator shall provide Settlement Class
19 Counsel and Defendants' Counsel with a declaration attesting to completion of the notice process set
20 forth in this Section IV, including the number of notices sent and returned, an explanation of efforts to
21 resend undeliverable notices, and copies of all Requests for Exclusion, which declaration shall be filed
22 with the Court by Settlement Class Counsel.

23 **G. Sufficient Notice**

24 Compliance with the procedures described in this Section IV shall constitute due and sufficient
25 notice to Settlement Class Members of this Settlement and of the Final Fairness and Approval Hearing,
26 shall satisfy the requirements of due process, and nothing else shall be required of the Representative
27 Plaintiff, Settlement Class Counsel, Defendants, Defendants' Counsel, or the Settlement Administrator
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1 to provide notice of the Settlement and the Final Fairness and Approval Hearing.

2 **H. Objections to Settlement**

3 **1. Deadline for Objections**

4 Any Settlement Class Member wishing to object to the approval of this Settlement shall inform
5 the Settlement Administrator in writing of his or her intent to object by following the procedure set
6 forth in the Notice of Settlement within sixty (60) calendar days of mailing. However, for any Notice
7 of Settlement that is mailed or re-mailed after the original mailing date the deadline to object will be
8 no later than ten (10) days prior to the Final Fairness and Approval Hearing even if such date is less
9 than 60 days from the date of mailing or re-mailing. A Settlement Class Member who does not submit
10 a valid and timely Request for Exclusion and who objects to the Settlement will still be considered a
11 Settlement Group Member. A Settlement Class Member who submits both a timely Request for
12 Exclusion and who attempts to object to the Settlement shall be deemed to have opted out of the
13 Settlement.

14 **2. Responses to Objections**

15 Settlement Class Counsel and Defendants' Counsel shall file any written objections from
16 Settlement Class Members submitted to the Settlement Administrator in accordance with this
17 Agreement, and Settlement Class Counsel's and Defendants' Counsel's responses to such objections,
18 at least five (5) court days before the Final Fairness and Approval Hearing.

19 **3. Waiver of Appeal**

20 Any Settlement Class Member who does not timely submit an objection to the Settlement and/or
21 does not comply with any other substantive or procedural obligations imposed by law, waives any and
22 all rights to appeal the Final Approval Order and Judgment, including all rights to any post-judgment
23 proceeding and appellate proceeding such as a motion to vacate the judgment or motion for
24 reconsideration.

25 **4. Defendants' Right to Rescind**

26 Defendants estimate that there are 567 Settlement Class Members, and any dispute regarding
27 any increase of at least 15% from Defendants' estimate shall be brought to Tripper Ortman for
28

mediation. Additionally, if five percent (5%) or more of the Settlement Class Members elect not to participate in the Settlement, Defendants may, at their election, rescind the Settlement. In that event, all actions taken in furtherance of the Settlement will be null and void. Defendants must jointly exercise this right of rescission, in a writing to Settlement Class Counsel, within twenty-one (21) calendar days of the date that the Settlement Administrator notifies the Parties of the total number of Settlement Class Members who have opted out of the Settlement. If Defendants exercise this right of rescission, Defendants must pay all reasonable expenses incurred by the Settlement Administrator as of the date of Defendants' notice of rescission.

I. Final Fairness and Approval Hearing

On the date set by the Court, the Final Fairness and Approval Hearing shall be held in order to: (1) determine whether the Court should give this Stipulation final approval; (2) determine whether Settlement Class Counsel's application for attorneys' fees and costs, and request for the Service and Release Payment to the Representative Plaintiff, should be granted; and (3) consider any timely Objections to Settlement, including Settlement Class Counsel's and Defendants' Counsel's responses thereto. At the Final Fairness and Approval Hearing, the Representative Plaintiff, Settlement Class Counsel, and Defendants' Counsel shall ask the Court to give final approval to this Settlement. Upon final approval, the Court shall enter a Final Approval Order (in a form submitted by Settlement Class Counsel and approved by Defendants' Counsel) which has the effect of adjudicating all claims set forth in the Complaint and implementing the release of Released Claims, as set forth in this Agreement. Upon the Court's final approval of this Stipulation of Settlement, the Action shall be dismissed with prejudice.

J. Settlement Payments to Settlement Group Members

Payments under this Settlement Agreement shall be made by the Settlement Administrator as follows, subject to Court approval at the Final Fairness and Approval Hearing.

Each Settlement Group Member shall be entitled to a pro rata share of the Net Settlement Fund based on the number of Qualifying Workweeks the Settlement Group Member worked during the Settlement Class Period to the extent the Qualifying Workweeks can be determined from Defendants'

records. However, Defendants do not have records indicating the number of Qualifying Workweeks worked by helpers employed by contract carriers during the Settlement Class Period. Therefore, each Settlement Group Member for whom the Settlement Class Data shows five (5) or more Qualifying Workweeks shall be credited with the number of Qualifying Workweeks shown in the Settlement Class Data, subject to the process for disputes about Qualifying Workweeks set forth below. Each Settlement Group Member for whom the Settlement Class Data shows less than five (5) Qualifying Workweeks, including each Settlement Group Member for whom Defendants do not have records indicating the number of Qualifying Workweeks, shall be credited with five (5) Qualifying Workweeks, subject to the process for disputes about Qualified Workweeks set forth below.

Using this method of calculating Qualifying Workweeks, the Net Settlement Amount shall be divided among individual Settlement Group Members using the following formula:

$$\text{(Settlement Group Member's Credited Qualifying Workweeks} \div \text{All Settlement Group Members' Credited Qualifying Workweeks)} \times \text{Net Settlement Amount}$$

Any Settlement Group Member for whom the Settlement Administrator was provided a social security number or other tax identification number as part of the Settlement Class Data shall receive an Individual Settlement Payment from the Net Settlement Fund. Any Settlement Group Member for whom a social security number or other tax identification number was not available in the Settlement Class Data must timely submit a Payment Information Form to receive an Individual Settlement Payment from the Net Settlement Fund. A Payment Information Form is timely if it is postmarked within sixty (60) calendar days of the mailing of the Notice of Settlement. However, for any Notice of Settlement that is mailed or re-mailed after the original mailing date the deadline to submit a Payment Information Form will be no later than ten (10) days prior to the Final Fairness and Approval Hearing even if such date is less than 60 days from the date of mailing or re- mailing. A Payment Information Form must be timely mailed to the Settlement Administrator at the address in the Notice of Settlement, or if it is submitted online to the Settlement Administrator, in accordance with the online submission instructions to be provided by the Settlement Administrator. The Payment Information Form must be signed (electronically, if submitted online) under penalty of perjury. To be valid, a Payment

Information Form must be signed without any deletion or amendment to its language confirming the release of FLSA claims and without any deletion or amendment to any other portion. All Settlement Group Members who do not submit a timely Request for Exclusion shall be bound by this Settlement, regardless of whether they submit a timely Payment Information Form.

Settlement Group Members entitled to payment as described above will receive a proportionate share of the Total Settlement Amount. The Settlement Administrator, on Defendants' and Settlement Class Counsel's collective behalf, shall have the authority and obligation to make payments, credits, and disbursements, including payments and credits in the manner set forth herein, to Settlement Group Members calculated in accordance with the methodology set out in this Agreement and orders of the Court.

**1. Inclusion of Qualifying Workweeks and Estimated Settlement Payment
Information in Notice of Settlement**

The Notice of Settlement sent to each Settlement Class Member shall state the amount of the Settlement Class Member's Qualifying Workweeks, as reflected in the Settlement Class Data. Each Notice of Settlement shall also include an estimate of the Settlement Class Member's settlement payment as a member of the Settlement Group, as calculated by the Settlement Administrator. The estimated settlement payment included in the Notice of Settlement will be calculated by assuming that no Settlement Class Members will be excluded from the Settlement Group.

2. Disputes about Qualifying Workweeks

If a Settlement Class Member disagrees with the number of Qualifying Workweeks stated in his or her Notice of Settlement, he or she may dispute that figure by informing the Settlement Administrator of the number of Qualifying Workweeks in dispute by submitting supporting documentation (such as, without limitation, timekeeping records, settlement statements, or pay stubs) prior to the deadline for objecting to the Settlement. Settlement Class Members must notify the Settlement Administrator of any such dispute within sixty (60) days of mailing the Notice of Settlement. However, for any Notice of Settlement that is mailed or re-mailed after the original mailing date, the deadline to dispute information in the Notice of Settlement will be no later than ten (10) days

1 prior to the Final Fairness and Approval Hearing even if such date is less than 60 days from the date of
2 mailing or re-mailing. If there is a dispute, the Settlement Administrator will consult with Settlement
3 Class Counsel and Defendants' Counsel to determine whether an adjustment is warranted. However,
4 the Settlement Administrator shall have the sole discretion to determine the outcome of any such
5 disputes. The Settlement Class Data will be presumed determinative if there is a dispute over
6 Qualifying Workweeks, unless the Settlement Class Member has submitted valid and compelling
7 documentation to support his or her claim to a different number of Qualifying Workweeks than the
8 number shown on the Settlement Class Notice.

9 **3. Payments to Participating Settlement Group Members**

10 Within twenty-one (21) days of Pilot's deposit of the Gross Settlement Amount with the
11 Settlement Administrator, the Settlement Administrator will make settlement payments to Settlement
12 Group Members eligible for payment based on the payment formula set forth herein. However, any
13 portion of the Net Settlement Fund that was allocated to Settlement Group Members for whom there
14 was no social security or other tax identification numbers provided in the Settlement Class Data, and
15 who did not submit valid and timely Payment Information Forms shall be reallocated on a pro rata basis
16 to those Settlement Group Members for whom social security or other tax identification numbers are
17 available, or who submitted valid and timely Payment Information Forms.

18 Settlement Group Member payments paid from the Net Settlement Amount will not be reduced
19 by any employer or employee tax withholdings. For Settlement Group Members for whom a social
20 security number or other tax identification number was either included in the Settlement Class Data or
21 provided by the Settlement Group Member in the Payment Information Form, the Settlement
22 Administrator will issue a Form 1099 for the payments. Each Settlement Group Member will be
23 responsible for any federal, state, and/or local tax obligations and/or consequences that may arise out
24 of the Individual Settlement Payments agreed to in this Agreement.

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**4. Settlement of PAGA Claims and Payment of Settlement Class Members
for PAGA Release**

In consideration for settlement and dismissal of all claims arising under the California Private Attorneys General Act, Cal. Labor Code § 2698, *et seq.* (“PAGA”) by the Settlement Class Members and in exchange for the release of all PAGA claims within the scope of the Released Claims, the Parties agree that, subject to Court approval, \$32,500 shall be allocated from the Gross Settlement Amount as payment for penalties under PAGA (the “PAGA Payment”). Twenty-five percent (\$8,125) of the PAGA Payment shall be distributed to Settlement Class Members (including Settlement Class Members who have opted out of the Settlement Group) as part of the Net Settlement Amount on a pro rata basis. The remaining seventy-five percent (\$24,375) of the PAGA Payment shall be payable to the LWDA, representing the LWDA’s share of PAGA penalties. To the extent the Court does not approve any or all of the PAGA Payment sought by Settlement Class Counsel, any amount disallowed by the Court will remain a portion of the Gross Settlement Amount to be distributed in accordance with the terms of this Stipulation.

K. The Settlement Administrator

The Settlement Administrator will perform the duties specified in this Stipulation and any other duties incidental to such obligations. The Settlement Administrator’s duties shall include, without limitation: establishing the QSF, preparing, translating and distributing the Notice of Settlement and Payment Information Forms; calculating and directing the disbursement of payments to Settlement Class Members, Settlement Class Counsel, the Settlement Class Representative and the LWDA; handling inquiries about the calculation of individual settlement payments; preparing and filing any tax documents or filings required by any governmental taxing authority or other governmental agency; providing requested status reports to the Parties’ counsel; immediately advising Defendants and Settlement Class Counsel of any Settlement Class Members who submit objections and/or requests for exclusions from the Settlement; providing a due diligence declaration for submission to the Court prior to the final approval hearing; printing and providing Settlement Class Members and Plaintiff with 1099 forms as required under this Agreement and applicable law; arranging for and remitting funds from

1 any uncashed settlement payment to the designated recipient, as determined by the Court; and for such
2 other tasks as the Parties mutually agree or the Court orders the Settlement Administrator to perform.
3 The Settlement Administrator shall maintain commercially reasonable procedures for securely
4 handling Settlement Class Data, and shall accept responsibility for and maintain insurance in case of
5 errors in the administration of the Settlement.

6 The Settlement Administrator shall establish a settlement payment center address, telephone
7 number, facsimile number, and email address to receive Settlement Class Members' inquiries about
8 the Notice of Settlement and Payment Information Form, requests to be excluded from the Settlement
9 and settlement payments.

10 In addition, the Settlement Administrator shall establish a static website and post this
11 stipulation, the court-approved Notice, any preliminary approval order, and the Final Approval Order
12 and Judgment.

13 The Parties confirm, and Settlement Class Counsel and Defendants' Counsel confirm that they
14 do not have any financial interest in the Settlement Administrator or otherwise have a relationship with
15 the Settlement Administrator that could create a conflict of interest.

16 **L. Time for Payment by Pilot**

17 Within thirty (30) days after the Effective Date, Pilot shall provide the Gross Settlement
18 Amount to the Settlement Administrator, which the Settlement Administrator shall place in a Qualified
19 Settlement Fund.

20 **M. Payments to Settlement Class Counsel and the Representative Plaintiff**

21 Within twenty-one (21) days of Pilot's deposit of the Gross Settlement Amount with the
22 Settlement Administrator, the Settlement Administrator shall make payments from the Qualified
23 Settlement Fund to: (1) Settlement Class Counsel, both the Settlement Class Counsel's Attorneys'
24 Fees and Settlement Class Counsel's Costs, awarded to Settlement Class Counsel by the Court; and (2)
25 Plaintiff Christian Matute, the Service and Release Award approved by the Court. These payments
26 will be reported on an IRS Form 1099.

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N. Payments to the California Labor and Workforce Development Agency

Within twenty-one (21) days of Pilot's deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will make the payment to the LWDA of \$24,375, or such other amount as approved by the Court.

O. Un-negotiated Settlement Payment Checks

If any Settlement Group Member's settlement payment check cannot be sent or otherwise has not been negotiated sixty (60) days after disbursement, the Settlement Administrator shall attempt to contact each Settlement Group Member to advise them to cash their checks, and to offer to replace any checks reported as either lost or stolen. In attempting to contact such persons, the Settlement Administrator will send notices by mail to the individuals' last known addresses (as provided by Defendants) after first checking those addresses against the NCOA database and utility database.

If a Settlement Group Member's check is not cashed within 180 days, the check will be void and a stop payment order may be placed on the check. In such event, the Settlement nevertheless will be binding upon the Settlement Group Member. The funds represented by all uncashed settlement checks will be transmitted by the Settlement Administrator to the California State Controller's Office Unclaimed Property Fund.

P. Settlement Class Counsel Attorneys' Fees and Costs

Settlement Class Counsel may move the Court for an order awarding attorneys' fees expressed as a percentage of the Gross Settlement Fund, and for reimbursement of costs and expenses incurred in the case. Any Settlement Class Counsel's Attorneys' Fees and Settlement Class Counsel's Costs awarded by the Court shall be paid from the Gross Settlement Amount.

To the extent the Court does not approve any or the entire amount Settlement Class Counsel seeks in Attorneys' Fees or Costs, such amounts shall remain part of the Gross Settlement Amount and distributed in accordance with the provisions of this Stipulation. If the Court approves a lesser amount for Settlement Class Counsel's Attorney's Fees or Settlement Class Counsel's Costs than those sought by Settlement Class Counsel, any amount disallowed by the Court shall be reallocated to the Settlement Group Members and the Parties agree that the settlement shall remain binding with such

modification(s) and its terms will otherwise be unchanged.

Upon the payment of the Court-approved amount of Settlement Class Counsel's Attorneys' Fees and Settlement Class Counsel's Costs, and except as otherwise provided by this Stipulation, Settlement Class Counsel waives any claim to costs and attorneys' fees and expenses against Defendants arising from or related to the Action, including but not limited to claims based on the California Labor Code or any other statute or law. Provided, however, nothing in this Agreement shall prevent Settlement Class Counsel from seeking additional fees for enforcing the terms of this Stipulation and investigating and recovering amounts owed under this Agreement.

Q. Services and Release Award to Representative Plaintiff

Plaintiff may move the Court for a Representative Plaintiff's Service and Release Award not to exceed \$10,000. Any Representative Plaintiff's Service and Release Award awarded by the Court shall be paid from the Gross Settlement Amount.

The Representative Plaintiff will be responsible for any federal, state, and/or local tax obligations and/or consequences that may arise out of any Representative Plaintiff's Service and Release Award. To the extent the Court does not approve any or all of the amount of the Service and Release Award sought by Settlement Class Counsel, any amount disallowed by the Court will remain a portion of the Gross Settlement Amount and be distributed in accordance with the terms of this Stipulation and the Parties agree that the Settlement shall remain in binding with such modification(s) and its terms will otherwise be unchanged.

V. LIMITATIONS ON USE OF THIS SETTLEMENT

A. No Admission of Liability

Neither the acceptance nor the performance by Defendants of the terms of this Stipulation of Settlement, nor any of the related negotiations or proceedings, nor any documents filed in support of the Settlement shall constitute, or be offered, received, claimed, construed, or deemed as, an admission, finding, or evidence of: (i) any wrongdoing by any Defendant, (ii) any violation of any statute or law by any Defendant, (iii) any liability on the claims or allegations in the Action or any other proceeding, or (iv) the propriety of certifying a litigation class in the Action or any other proceeding, and shall not

be used for any purpose whatsoever in any legal proceeding other than a proceeding to enforce the terms of the Settlement.

B. Nullification

If the Court for any reason does not finally approve this Settlement, this Stipulation shall be null and void and all Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court.

Invalidation of any material portion of this Stipulation shall invalidate this Settlement in its entirety unless the Parties shall agree in writing that the remaining provisions shall remain in full force and effect.

VI. RELEASE BY THE SETTLEMENT GROUP MEMBERS

It is the desire of the Representative Plaintiff, Settlement Group Members, and Defendants to fully, finally, and forever settle, compromise, and discharge the Released Claims. Upon entry of the Final Approval Order, all Settlement Group Members, on behalf of themselves, and each of their heirs, representatives, successors, assigns, and attorneys, fully releases and forever discharges the Released Parties from any and all Released Claims that accrued during the Settlement Class Period. This release shall be binding on all Settlement Group Members who have not timely submitted a valid and complete Request for Exclusion, including each of their respective attorneys, agents, spouses, executors, representatives, guardians ad litem, heirs, successors, and assigns, and shall inure to the benefit of the Released Parties. In addition, the release shall be binding as to all claims arising under PAGA for all Settlement Class Members regardless of whether they opted out of the Settlement Group.

VII. RELEASE BY THE REPRESENTATIVE PLAINTIFF

Upon entry of the Final Approval Order, the Representative Plaintiff fully releases and forever discharges the Released Parties from any and all claims, liabilities, agreements, obligations, losses, damages, costs, expenses, attorneys' fees, injuries, demands, indemnities and causes of action of every kind and nature in law, equity or otherwise, known or unknown, suspected or unsuspected, disclosed or undisclosed, contingent or accrued, including but not limited to those arising out of or in any way connected with Plaintiff's relationships with any Released Party, or any other occurrences, actions,

omissions or claims whatever, known or unknown, suspected or unsuspected, which Plaintiff now owns or holds or has at any time heretofore owned or held as against any of the Released Parties.

The Representative Plaintiff hereby agrees that, notwithstanding § 1542 of the California Civil Code, all claims that the Representative Plaintiff may have, known or unknown, suspected or unsuspected, are hereby released. Section 1542 provides:

“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.”

The Representative Plaintiff expressly waives the provisions of Section 1542 with full knowledge and with the specific intent to release all known or unknown, suspected or unsuspected, claims arising on or before the Effective Date of the Settlement, and therefore specifically waives the provisions of any statute, rule, decision, or other source of law of the United States or of any state of the United States or any subdivision of a state which prevents release of unknown claims.

VIII. REPRESENTATIONS OF SETTLEMENT CLASS COUNSEL

Settlement Class Counsel affirm that, other than Christian Matute, they do not represent any other workers asserting claims against Defendants as to the Released Claims. Settlement Class Counsel warrant that they have not been retained by and do not otherwise represent any other individual or entity who has notified Settlement Class Counsel of potential claims against Defendants as to the Released Claims.

IX. MISCELLANEOUS PROVISIONS

A. Amendments

This Stipulation of Settlement may only be modified or changed by a writing signed by the Parties or by their counsel.

B. Integrated Agreement

After this Stipulation is signed and delivered by all Parties to the Action and their counsel, this Stipulation and its exhibits will constitute the entire agreement between the Parties to the Action

1 relating to the Settlement, and it will then be deemed that no oral representations, warranties, covenants,
2 or inducements have been made to any Party concerning this Stipulation or its exhibits other than the
3 representations, warranties, covenants, and inducements expressly stated in this Stipulation and its
4 exhibits.

5 **C. No Inducements**

6 Plaintiff and Defendants acknowledge that they are entering into this Agreement as a free and
7 voluntary act without duress or undue pressure or influence of any kind or nature whatsoever and that
8 neither Plaintiff nor Defendants have relied on any promises, representations, or warranties regarding
9 the subject matter hereof other than as set forth in this Stipulation.

10 **D. No Prior Assignment**

11 The Parties hereto represent, covenant, and warrant that they have not directly or indirectly,
12 assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity
13 any portion of any liability, claim, demand, action, cause of action, or rights herein released and
14 discharged except as set forth herein.

15 **E. No Retaliation or Advice**

16 Defendants agree not to retaliate against any Settlement Class Member, and Defendants will
17 not induce or offer any advice to any Settlement Class Member to opt out of, or object to, the
18 Settlement.

19 **F. Attorneys' Fees**

20 To the extent that any Party institutes any legal action, arbitration, or other proceeding to
21 enforce the terms of the Settlement, the prevailing Party will be entitled to recover their reasonable
22 attorneys' fees and costs from the other Party or Parties.

23 **G. Applicable Law**

24 All terms and conditions of this Stipulation and its exhibits will be governed by and interpreted
25 according to the laws of the State of California, without giving effect to any conflict of law principles
26 or choice of law principles.

27 ///

H. Entry of Judgment Pursuant to Terms of Settlement

The Parties agree that upon the Settlement of this case, the Court may enter final judgment pursuant to the terms of this Settlement and the Court will retain jurisdiction over the Parties to enforce the Settlement until performance in full of the terms of the Settlement.

I. Continuing Jurisdiction of the Court

The Parties agree that the Court shall retain jurisdiction over the Parties, and over this Stipulation of Settlement, in order to: (i) monitor and enforce compliance with this Settlement Stipulation, Final Approval and/or any related order of this Court; and/or (ii) resolve any disputes over this Settlement Stipulation or the administration of the benefits of this Settlement.

J. Notices

All notices, requests, demands and other communications required or permitted to be given pursuant to this Agreement shall be in writing, and shall be delivered personally or by first class mail to the undersigned persons at their respective addresses as set forth below:

SETTLEMENT CLASS COUNSEL:

Michael H. Boyamian
Armand R. Kizirian
BOYAMIAN LAW, INC.
550 North Brand Boulevard, Suite 1500
Glendale, CA 91203
Phone: 818.547.5300

COUNSEL FOR DEFENDANT PILOT:

Dhananjay S. Manthripragada
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
Phone: 213.229.7000

COUNSEL FOR DEFENDANT BEST BUY:

Barbara J. Miller
MORGAN, LEWIS & BOCKIUS LLP
600 Anton Blvd., Suite 1800
Costa Mesa, CA 92626
Phone: 714.830.0600

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K. Binding on Successors

This Agreement shall be binding and shall inure to the benefit of the Parties to the Action and their respective successors, assigns, executors, administrators, heirs, and legal representatives.

L. Counterparts

This Stipulation, and any amendments hereto, may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original and all of which taken together shall constitute the same instrument.

M. Warranties and Representations

With respect to themselves, each of the Parties to this Action and or their agent or counsel represents, covenants, and warrants that they have full power and authority to enter into and consummate all transactions contemplated by this Stipulation and have duly authorized the execution, delivery, and performance of this Stipulation.

N. Representation by Counsel

The Parties to this Action acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Stipulation, and that this Stipulation has been executed with the consent and advice of counsel.

O. Parties' Authority

The signatories hereto hereby represent that they are fully authorized to enter into this Stipulation of Settlement and bind the Parties to the terms and conditions of this Settlement.

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1
2 Dated: May __, 2023

CHRISTIAN MATUTE, on behalf of himself
and all others similarly situated

3
4
5 By: _____
Christian Matute

6
7 Dated: May 16, 2023

PILOT AIR FREIGHT LLC dba PILOT
FREIGHT SERVICES

8
9
10 By:  _____

11 Name: Michael Scott

12 Position: U.S Head of Labor & Employment

13
14 Dated: May __, 2023

BEST BUY CO., INC.

15
16
17 By: _____

18 Name: _____

19 Position: _____

Exhibit “A”

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT
AND FINAL APPROVAL HEARING**

***Christian Matute v. Pilot Air Freight LLC d/b/a Pilot Freight
Services, Inc. and Best Buy Co., Inc.,***
United States District Court for the Northern District of California
Case No. 4:22-cv-00587 YGR

A settlement has been reached with Pilot Air Freight LLC d/b/a Pilot Freight Services, Inc. and/or DSI Logistics, Inc. (Pilot) and Best Buy Co., Inc. (Best Buy) in a class action lawsuit brought by Plaintiff, Christian Matute, on behalf of himself and other individuals who provided delivery services for Pilot and Best Buy as contract carriers, drivers or helpers. The lawsuit alleged that Pilot and Best Buy misclassified these individuals as independent contractors and violated California's wage and hour laws between March 28, 2017 and (insert date of preliminary approval) (the Settlement Class Period). Pilot and Best Buy deny all allegations and the settlement is not an admission of wrongdoing by Pilot or Best Buy.

You may be included in this settlement and entitled to receive an Individual Settlement Payment if you are:

1. An individual who provided services for Pilot and Best Buy as a contract carrier, driver and/or helper in the State of California from March 28, 2017 through (insert date of preliminary approval); or
2. An entity owned and controlled by a contract carrier which contracted directly with Pilot and provided delivery services for Best Buy from March 28, 2017 through (insert date of preliminary approval).

Contract carriers, drivers or helpers who meet these criteria (Settlement Class Members) are entitled to an estimated Individual Settlement Payment. Your Payment Information Form sets forth an *estimate* of the amount you will receive under this settlement, along with the Credited Qualifying Workweeks used in calculating that number.

However, the Settlement Class shall exclude all individuals and entities who provided delivery services for Best Buy as contract carriers, drivers and/or helpers in the State of California exclusively prior to April 18, 2019 and who previously released claims through that date via the settlement in *Henriquez v. DSI Logistics, Inc.*, Los Angeles Sup. Ct. No. BC714165 (final approval granted Nov. 25, 2019) (the *Henriquez Case*).

Your legal rights are affected whether you act or don't act. Read this notice carefully. It addresses each of the following options available to you and the deadlines to exercise your rights and options:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT			
PROVIDE	YOUR	TAX	Payments from this settlement may be considered taxable income and will be reported to the appropriate taxing authorities. (See Section 8.)
IDENTIFICATION	NUMBER	OR	
SOCIAL SECURITY	NUMBER		

DEADLINE: (INSERT DATE 60 DAYS AFTER ORIGINAL MAILING OF NOTICE (60-DAY DEADLINE))	You need to provide your tax identification number (TIN) or social security number (SSN) to the Settlement Administrator in order to obtain a settlement payment. You must provide your SSN/TIN using the included Payment Information Form and return it to the Settlement Administrator by the (insert 60-day Deadline). If you do not timely return a valid Payment Information Form and the Settlement Administrator does not otherwise have an SSN/TIN on file for you, you WILL NOT receive a settlement payment but you WILL give up any right to sue Pilot and Best Buy for the claims made in this Lawsuit or any that arise from or are reasonably related to those claims. If you do timely return a valid Payment Information Form or the Settlement Administrator does otherwise have a SSN/TIN on file for you, you WILL receive a settlement payment and you WILL give up any right to sue Pilot and Best Buy for the claims made in this Lawsuit or any that arise from or are reasonably related to those claims. (See Section 17.)
ASK TO BE EXCLUDED FROM THE SETTLEMENT (EXCEPT FOR PAGA CLAIMS) DEADLINE: INSERT 60-DAY DEADLINE	If you exclude yourself from this settlement, you WILL NOT receive payment for any other claims asserted in this lawsuit but you WILL receive a payment pursuant to the Private Attorneys General Act (PAGA) Claims because you may not exclude yourself from a PAGA Claim under California law. You WILL have the option to file your own lawsuit regarding the claims resolved by this Settlement or those that arise from or are reasonably related to those claims except for the PAGA claim. You WILL NOT be bound by the release explained in this Notice below as to any claims except the PAGA claim. (See Sections 13 & 14.)
OBJECT TO THE SETTLEMENT DEADLINE: INSERT 60-DAY DEADLINE	If you do not exclude yourself from the Settlement, you may still object to it by writing to the Court to explain the basis for your objection. The Court may or may not agree with your objection. (See Sections 9 & 14.)
SPEAK AT THE HEARING ON _____ AT _____ A.M.	If you object to the settlement, you may ask the Court for permission to speak at the Final Approval Hearing about your objection. (See Section 11.)

DO NOTHING (NO DEADLINE)	If you do nothing, you will give up any right to sue Pilot and Best Buy for the claims made in this Lawsuit, or any that arise from or are reasonably related to those claims. If you do nothing and the Settlement Administrator has a SSN/TIN on file for you, you will receive a settlement payment. However, if you do nothing and do not return a completed Payment Information Form and the Settlement Administrator does NOT otherwise have a SSN/TIN on file for you, you will NOT receive a settlement payment. (See Section 15.)
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1. Why Should You Read This Notice?

This Notice explains your right to share in the monetary proceeds of this Settlement, exclude yourself from or opt out of the Settlement, or object to the Settlement. If you object to the Settlement, you cannot opt out of the Settlement, and you will be bound by the terms of Settlement if the Court denies your objection.

2. What Is This Case About?

This lawsuit alleges that Pilot and Best Buy improperly classified contract carriers, drivers and helpers (Settlement Class Members) who provided delivery services for Pilot and Best Buy from March 28, 2017 through (insert date of preliminary approval) as independent contractors instead of as employees. The lawsuit also alleges Settlement Class Members were not compensated for all hours worked, were not paid minimum wage, were not provided overtime wages, were not provided meal and rest periods, were not provided timely and compliant itemized wage statements, were not paid all wages due upon termination or resignation, had wages and compensation due wrongly withheld from them, were subject to unfair business practices. The lawsuit also alleges that these alleged violations give rise to penalties that should be paid to the aggrieved employees and the California Labor and Workforce Development Agency (LWDA) under PAGA. This lawsuit seeks recovery of compensatory damages, restitution, punitive damages, penalties, prejudgment interest, attorneys' fees, disgorgement of profits and costs. The claims in this lawsuit are brought under California law.

Pilot and Best Buy contend that they have strong legal and factual defenses to these claims, but recognize the risks, distractions, and costs associated with litigation. Pilot and Best Buy contend that Settlement Class Members were properly qualified as independent contractors, and that the policies challenged by Plaintiff, including those regarding payment for time worked, meal breaks, and rest breaks, are lawful and have been lawful throughout the relevant time period. Pilot and Best Buy also contend that Plaintiff's claims do not meet the requirements for class certification.

This Settlement is the result of good faith, arm's length negotiations between Plaintiff, Pilot, and Best Buy, through their respective attorneys. The Parties agree that, in light of the risks and expenses associated with continued litigation, this Settlement is fair and appropriate under the circumstances, and in the best interests of the Settlement Class Members. This Settlement is a compromise and is not an admission of liability on the part of Pilot or Best Buy.

The Court has not ruled on the merits of Plaintiff's claims or the defenses raised by Pilot and/or Best Buy.

3. What Are the Terms of the Settlement?

Pilot has agreed to pay **\$650,000.00** to settle this lawsuit (Gross Settlement Amount). Deductions from this amount will be made for attorneys' fees and costs for Settlement Class Counsel, settlement administration costs not to exceed \$_____, and a service award in an amount not to exceed \$10,000.00 to Plaintiff and Class Representative, Christian Matute, for his service to the Settlement Class Members. (See Section 19). After deductions of these amounts, what remains of the Gross Settlement Amount, or the Net Settlement Amount, will be available to pay monetary Individual Settlement Payments to Plaintiff, and Settlement Class Members who do not opt out of the Settlement.

All Settlement Class Members are eligible to receive an Individual Settlement Payment from the Net Settlement Amount as explained in Sections 4 & 6.

4. **Why did I receive this Notice?**

You received this notice because Pilot and/or Best Buy's records show that you or an entity you own and control may have provided services for Pilot and Best Buy as a contract carrier, driver and/or helper in the State of California from March 28, 2017 through (**insert date of preliminary approval**) and that you did not previously release any and all of your claims through the prior settlement in the *Henriquez v. DSI Logistics, Inc.* case.

5. **If I am part of the settlement, what are my options?**

If you are a Settlement Class Member, you have several options. You may:

- a) Participate in the Settlement and receive the benefits of the settlement (*See Section 6*);
- b) Object to the settlement by filing and serving an objection by (**insert 60-day Deadline**) (*See Sections 9 & 14*);
- c) Request to be excluded from the settlement by submitting a request to be excluded from, or opt out of, the settlement by (**insert 60-day Deadline**) (*See Sections 13 & 14*).

6. **How Much Can I Expect to Receive and What do I Need to Do to Receive a Payment?**

Any Settlement Class Member who does not opt out of the Settlement will be considered a Settlement Group Member. However, in order to ensure you receive your Individual Settlement Payment, you **MUST** return a completed Payment Information Form containing your Social Security Number or Tax ID Number on or before (**insert 60-day Deadline**). However, if you do not return a completed Payment Information Form **AND** the Settlement Administrator otherwise has your Social Security Number or Tax ID Number on file, you will still receive your Individual Settlement Payment.

Individual Settlement Payments are determined as follows:

- a) Each Settlement Group Member will receive a proportional share of the Net Settlement Amount based upon the number of Qualifying Workweeks shown in Defendants' records for that Settlement Group Member. The Individual Settlement Payment is the amount equal to the Settlement Group Member's Credited Qualifying Workweeks divided by All Settlement Group Members' Credited Qualifying Workweeks multiplied by the Net Settlement Amount.
- b) Qualifying Workweeks means any week between March 28, 2017 and (**insert date of preliminary approval**) during which a Settlement Group Member provided services as a helper, driver, or contract carrier (also referred to as an independent hauler) for Pilot and Best Buy, to the extent that the Settlement Group Member's Qualifying Workweeks can be determined from Defendants' records. Each Settlement Group Member will be credited with the higher of their actual Qualifying Workweeks as determined from Defendants' records or Five (5) Qualifying Workweeks (Credited Qualifying Workweeks).

- i. Any Credited Qualifying Workweeks for which the Settlement Group Member previously released claims through the settlement in the *Henriquez* case are not considered Credited Qualifying Workweeks.
- ii. **Your Credited Qualifying Workweeks according to Defendants' records and your estimated Individual Settlement Payment are listed on the Payment Information Form at page [REDACTED] of this Notice.**

It is your responsibility to keep a current address on file with the Settlement Administrator to ensure receipt of your Individual Settlement Payment. If you fail to keep your address current, you may not receive your Individual Settlement Payment, but you will still be bound by the Settlement.

7. Can I dispute my estimated Net Settlement Amount?

Your estimated Net Settlement amount is based on your Credited Qualifying Workweeks as shown on the Payment Information Form. If you do not believe that the Credited Qualifying Workweeks shown is accurate, you may submit supporting documentation showing when you believe you provided delivery services for Pilot and Best Buy (such as, without limitation, timekeeping records, settlement statements or pay stubs) to the Settlement Administrator. Any disputes to the Credited Qualifying Workweeks must be postmarked by (insert 60-day Deadline) and should be mailed to (insert Settlement Administrator Address). The Settlement Administrator will consult with Settlement Class Counsel and Defendants' Counsel regarding all disputes, but no adjustments will be made unless the Settlement Group Member has submitted valid and compelling documentation to support the dispute to the Credited Qualifying Workweeks shown on the Payment Information Form. The Settlement Administrator shall have sole discretion to determine the outcome of any such disputes and shall notify the Settlement Group Member in writing of the outcome.

To do so, send a letter to the Settlement Administrator explaining the basis for your dispute and attach copies of the supporting documentation as described above.

8. How is my Net Settlement Amount reported for tax purposes?

For tax reporting purposes, all Individual Settlement Payments will be reported on an U.S. Internal Revenue Service (IRS) Form 1099. In the event any portion of the Individual Settlement Payment paid to the Settlement Group Members is ultimately construed by the IRS or any other taxing authority to be taxable income from which taxes should have been withheld, the Settlement Group Members shall pay any and all such taxes, interest, and penalties on the amount they receive. None of the parties or attorneys makes any representations concerning the tax consequences of this Settlement or the participation of any Settlement Group Member in it. Settlement Group Members should consult with their own tax advisors concerning the tax consequences of the Settlement based on their Individual Settlement Payment.

9. How do I object to the settlement?

If you do not exclude yourself from the settlement, you can ask the Court to deny approval of the settlement by filing an objection. You can't ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments

will be sent out, and the lawsuit will continue. If that is what you want to happen, you should object. To be considered, any objection must be made in writing and be filed with the Court. All written objections must:

- (a) state the factual and/or legal grounds for your objection to the settlement and include any documents that support your objection;
- (b) Include your full name, address, telephone number, email address, and any other identifying information such as the entity you own and control, or other names you may have used when providing delivery services;
- (c) be submitted to the Court either by filing them electronically or in person at any location of the United States District Court, Northern District of California or by mailing them to the Class Action Clerk, United States District Court, Northern District of California, 1301 Clay Street, Suite 400S, Oakland CA 94612; and
- (d) be filed or postmarked on or before **(insert 60-day Deadline)**.

10. Can I still receive a settlement award if I do object to the settlement?

If you object to the settlement but the Court approves the settlement despite your objection, you will receive settlement benefits in the same manner as any other Settlement Group Member.

If the Court agrees with you (or any other) objection and does not approve the settlement, you and other Settlement Group Members will not receive any settlement benefits because the settlement agreement will not become effective.

11. Can I appear at the final approval hearing?

If you do not exclude yourself from the settlement, you can (but do not have to) participate and speak for yourself at the Final Approval Hearing. You can also have your own individual lawyer speak separately for you, but you will have to pay for that lawyer yourself.

If you want to appear, or if you want your own lawyer to participate and speak for you regarding the settlement, you and/or your lawyer must first file an objection to the settlement (as described above in Section 9). You must also include on the front of the objection the statement “I intend to appear at the hearing” and identify any persons you propose to call to testify at the hearing or evidence you intend to introduce.

12. Do I have to participate in the settlement?

You are not required to participate in all aspects of the settlement. If you want to exclude yourself from the settlement of all claims except PAGA Claims, you must take action to get out of the settlement. This is called “excluding yourself” or “opting out.” If you exclude yourself from the settlement, you will not be eligible to receive any compensation under the settlement for any claims except the PAGA Claims; you will not be bound by any judgment or settlement of the case; and you will keep, subject to applicable law, your right to sue Pilot or Best Buy for any claims except PAGA Claims. Even if you exclude yourself, you will still receive a pro rata portion of the

PAGA Payment allocated to be distributed to Settlement Class Members for PAGA Claims, and you will release your rights to pursue PAGA Claims against either Pilot or Best Buy.

13. How can I exclude myself from the settlement?

To exclude yourself from the settlement, you must submit a written and signed statement clearly requesting exclusion from the Settlement Class by (insert 60-day Deadline) to:

Matute v. Pilot Settlement Administrator (insert Settlement Administrator Address).

To be effective, this written request must include your full name, address, telephone number, and last four digits of your Social Security Number, be submitted via First Class U.S. mail, and be postmarked by (insert 60-day Deadline). If you fail to submit a valid and timely request for exclusion in this manner, you will be bound by the settlement and judgment entered by the Court.

14. What is the difference between excluding myself and objecting?

Objecting is telling the Court that you do not like something about the settlement but that you still want to participate in the settlement. You can object to the settlement only if you do not exclude yourself from the settlement.

Excluding yourself from the settlement is telling the Court that you do not want to be part of the settlement. If you exclude yourself from the settlement, you cannot object to the settlement because it no longer affects you.

15. What if I do nothing?

If you do nothing, you will likely NOT receive an Individual Settlement Payment, but you will still be a Settlement Group Member and will be bound by the settlement. In order to receive an Individual Settlement Payment, the Settlement Administrator MUST receive your Social Security Number or Tax Identification Number, which is why you which is why it is extremely important that you submit a completed Payment Information Form if you would like to receive an Individual Settlement Payment. However, if you do not return a completed Payment Information Form AND the Settlement Administrator otherwise has your Social Security Number or Tax ID Number on file, you will still receive an Individual Settlement Payment.

16. Do I need to hire my own attorney?

You do not need to hire an attorney, but you can if you want to. The Class Representative, you, and the entire Settlement Class are already represented by the attorneys listed below who are known as “Settlement Class Counsel”.

BOYAMIAN LAW, INC.

Michael H. Boyamian, SBN 256107
Armand R. Kizirian, SBN 293992
550 North Brand Boulevard, Suite 1500
Glendale, CA 91203
Phone: 818-547-5300
Fax: 818-547-5678

michael@boyamianlaw.com
armand@boyamianlaw.com

You do not need to pay for their services. They will be paid from the settlement fund. If you decide to hire your own attorney, you will have to pay for your attorney's services yourself.

17. What Claims Am I Releasing?

Upon the date the Settlement becomes effective (Effective Date), all Settlement Class Members who do not opt out of the Settlement release the claims described below (Released Claims) against Pilot and Best Buy and their parents, owners, predecessors, successors, assigns, subsidiaries, and affiliates, and each of their past, present, and future officers, directors, trustees, agents, and/or employees (Released Parties).

The Released Claims include any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action, and liabilities of any nature whatsoever, whenever incurred, including costs, expenses, penalties, and attorneys' fees, known or unknown, suspected or unsuspected, in law or equity, that Plaintiff and/or any Settlement Class Member, had or now has, against the Released Parties that arise from or are reasonably related to the conduct alleged in the First Amended Complaint, including but not limited to any and all claims pursuant to the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, et seq.; California Labor Code sections 132a, 201-204, 206.5, 207, 208, 210-214, 216, 218, 218.5, 218.6, 221-224, 225.5, 226, 226.3, 226.7, 226.8, 227, 227.3, 245-249, 351, 353, 432.4, 432.5, 450, 510-512, 551-552, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1194.3, 1197, 1197.1, 1198, 2753, 2802, 2804, 3700 et seq., and 4553 et seq.; the PAGA, California Labor Code section 2698 et seq.; California Code of Civil Procedure section 1021.5; California Code of Regulations, title 8, sections 11010 and 11040; Industrial Welfare Commission Wage Orders; California Business and Professions Code sections 17200 et seq.; and any other similar municipal code or ordinance, state, federal, or common law, for unpaid wages, minimum wages, regular wages, overtime wages, expense reimbursement, wage statements, payroll recordkeeping, reporting time, improper deduction of wages, failure to provide workers' compensation insurance, meal periods, rest breaks, sick leave, final pay, penalties for timely payment of wages upon discharge, waiting time penalties, PAGA penalties, unfair business practices, all claims arising out of or relating to the statutory causes of action described herein, restitution, interest, costs and expenses, attorneys' fees, declaratory relief, injunctive relief, liquidated damages, exemplary or punitive damages, civil penalties, equitable remedies, and/or pre- or post-judgment interest at any time during the Settlement Class Period. Released Claims include all such claims regardless of whether they are known or unknown, suspected or unsuspected, and shall run from March 28, 2017 through (insert date of preliminary approval).

Settlement Class Members understand and agree that they are providing the Released Parties with a full and complete release with respect to the Released Claims.

18. Can Pilot or Best Buy Retaliate Against Me for Participating in this Settlement?

No. Your decision as to whether or not to participate in this Settlement will in no way affect your work or relationship with Pilot or Best Buy. It is unlawful for Pilot or Best Buy to take any adverse action against you as a result of your participation in this Settlement.

19. What will Settlement Class Counsel and the Class Representative get from this settlement?

Settlement Class Counsel have not received compensation for their services in bringing the Lawsuit. They will seek to be paid from the Gross Settlement Amount of \$650,000.00. They will ask the Court for an award of attorneys' fees of up to \$214,500 or 33.33% of the Gross Settlement Amount, and costs not to exceed \$ [REDACTED].

The Class Representative will also request a service award not to exceed \$10,000 for the time and work he put into this Lawsuit.

Settlement Class Counsel will file motions asking the Court to approve these awards. The Court may approve these awards at the Final Approval Hearing.

20. When will the settlement be final?

The United States District Court for the Northern District of California has preliminarily approved the Settlement as fair and reasonable. The Court will hold a Final Approval Hearing on **DATE**, 2023, at [REDACTED] a.m., before the Honorable Yvonne Gonzalez Rogers at the Ronald V. Dellums Federal Building and United States Courthouse, 1301 Clay Street, Oakland, California 94612, Courtroom 1. The Final Approval Hearing may be rescheduled to a later time without further notice to you. You can check the Court's website to see the schedule of upcoming motion hearings at <https://apps.cand.uscourts.gov/CEO/cfd.aspx?7145>.

You may, but do not have to, attend the Final Approval Hearing. At the hearing, the Court will decide whether to approve the settlement, the requested award of attorneys' fees and expenses, the service award for Class Representative for prosecuting this litigation, and the costs of administering the settlement.

After the Court rules on the final approval and either the time to appeal has expired or any appeal filed has been resolved in favor of the settlement, the settlement will become final. Once the settlement is final, Individual Settlement Payments will be sent to Settlement Group Members.

21. What if I don't cash my settlement check?

If you participate in the Settlement, you will have 180 days after the Settlement Administrator mails your Individual Settlement Payment check to cash it. If you do not cash the Individual Settlement Payment check sent to you within 180 days of issuance, it will become void, but you will still be bound by the settlement. If at the conclusion of the 180-day void period, there are any uncashed checks, the Settlement Administrator will send the funds represented by all uncashed settlement checks to the California State Controller's Office Unclaimed Property Fund.

22. What dates should I be aware of?

(insert 60-day Deadline) – Last day to file objections to the settlement (including any request to appear at the Final Approval Hearing).

(insert 60-day Deadline) – Last day to postmark requests for exclusion from the Settlement Class.

(insert 60-day Deadline) - Last day to return Payment Information Form, if required.

(insert 60-day Deadline) - Last day to dispute your Credited Qualifying Workweeks.

If the Settlement Administrator had to re-send this Notice to you after the original date that Notices were mailed, the above deadlines may have been extended. Contact the Settlement Administrator for any questions about whether your deadlines have been extended.

DATE, at TIME a.m. (unless otherwise ordered by the Court) – Final Approval Hearing at the Court.

23. Where can I get more information?
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This Notice is only a summary of the Lawsuit and the settlement. For more detailed information, you may review the Complaint or the Stipulation of Class Action Settlement, available at the Settlement website at [insert web address], or call toll-free at [insert 800#], or access the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cacd.uscourts.gov/>.

PLEASE DO NOT CONTACT THE COURT, THE CLERK OF THE COURT OR THE JUDGE FOR INFORMATION ABOUT THE SETTLEMENT OR THIS LAWSUIT. Please direct any questions regarding this Notice and the settlement to the Settlement Administrator at [insert 800#] or to Settlement Class Counsel at 818-547-5300.

Exhibit “B”

PAYMENT INFORMATION FORM

*Christian Matute v. Pilot Air Freight LLC d/b/a Pilot Freight
Services, Inc. and Best Buy Co., Inc.,
United States District Court for the Northern District of California
Case No. 4:22-cv-00587 YGR*

Please review this Payment Information Form and read its instructions carefully.

YOUR CREDITED QUALIFYING WORKWEEKS:

According to Defendants' records and the terms of the Settlement Agreement, you are entitled to a payment based on [REDACTED] Credited Qualifying Workweeks during the Settlement Class Period.

If you dispute the number of Credited Qualifying Workweeks displayed here, you may submit a dispute to the Settlement Administrator by (insert 60-day Deadline). See Section 7 of the Notice for details on how to submit a dispute.

YOUR ESTIMATED PAYMENT:

Based on your Credited Qualifying Workweeks, the Settlement Administrator estimates that your Individual Settlement Payment will be \$ [REDACTED].

INSTRUCTIONS FOR THIS PAYMENT INFORMATION FORM:

In order to ensure that you receive your share of the settlement proceeds, you **MUST** complete and return the Payment Information Form on the next page, including your Social Security Number/Tax ID Number, by no later than (insert 60-day Deadline) to the Settlement Administrator at:

Settlement Administrator
ADDRESS
CITY, STATE, ZIP
Tel: (XXX) XXX-XXXX
email@email.com

IF YOU DO NOT RETURN THE PAYMENT INFORMATION FORM PROVIDED ON THE NEXT PAGE, AND THE SETTLEMENT ADMINISTRATOR DOES NOT OTHERWISE HAVE YOUR SOCIAL SECURITY NUMBER/TAX ID NUMBER ON FILE, YOU WILL NOT RECEIVE ANY MONEY FROM THIS SETTLEMENT, YET WILL STILL BE BOUND BY ALL OF ITS TERMS.

Name: [CLAIMANT NAME] _____

Entity Name (if applicable): _____

Social Security Number/Tax ID Number: [CLAIMANT SSN/TAX ID (IF AVAILABLE)]

Address: _____

Phone: _____

Email Address: _____

BY SIGNING BELOW, you affirm that the information provided above is accurate. Regardless of whether you submit a completed Payment Information Form, you will be bound by the Settlement Agreement and the Settlement Group Members' release of claims against Defendants, including claims under the federal Fair Labor Standards Act ("FLSA"), unless you exclude yourself from the settlement. However, by signing below, you explicitly agree to release any FLSA claims against Defendants.

(Signature)

(Date)

Exhibit “2”

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Matute v. Pilot Freight Services

Monday, January 30, 2023

Requesting Attorneys Name:

Armand Kizirian

E-Mail Address:

armand@boyamianlaw.com

ILYM Contact

Lisa Mullins

E-Mail

Lisa@ilymgroup.com

Contact Number

714.878.8836

ESTIMATE FOR ADMINISTRATION SOLUTIONS

ASSUMPTIONS	
Total Estimated Class Members	600
Estimated Percentage of Undeliverable Mail	20%
Certified Spanish Translations	Yes
NCOA	Yes
Case Duration (Years)	1

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	3	\$450.00
Programming of Class Database	Hourly	\$175.00	3	\$525.00

*ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.

Subtotal \$975.00

PROJECT MANAGEMENT				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	5	\$600.00
Staff Hours for Processing Returned Mail	Hourly	\$70.00	2	\$140.00
Staff Hours for Processing Exclusions & Objections	Hourly	\$70.00	2	\$140.00
Report Processing	Hourly	\$70.00	3	\$210.00
Toll-Free Call Center	Flat Fee	\$175.00	1	\$175.00
Certified Spanish Translations	Flat Fee	\$1,250.00	1	\$1,250.00
Static Website, Includes Hosting	Flat Fee	\$750.00	1	\$750.00
NCOA	Flat Fee	\$125.00	1	\$125.00
Weekly Reports	Flat Fee	\$750.00	1	Waived

Subtotal \$3,390.00

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
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NOTIFICATION/MAILING				
Fulfillment of Notices	Per Piece	\$1.50	600	\$900.00
First Class USPS Postage	Per Piece	\$0.60	600	\$360.00
Re-Mails (Skip Trace Undeliverable)	Per Piece	\$2.00	120	\$240.00
Storage, Photocopies, Deliveries	Flat Fee	\$290.00	1	\$290.00

Subtotal \$1,790.00

DISTRIBUTION (Includes EIN, Bank Acct */QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	4	\$600.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	4	\$500.00
Check Stub & Release - (including W2/1099)	Per Check	\$1.00	600	\$600.00
USPS First Class 1oz Postage	Per Piece	\$0.60	600	\$360.00
Re-Mails (Skip Trace Undeliverable)	Per Piece	\$1.50	60	\$90.00
Preparation of Taxes	Hourly	\$120.00	8	\$960.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

**Additional Bank fees may apply*

Subtotal \$4,610.00

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	3	\$300.00
Project Manager Final Reporting	Hourly	\$120.00	3	\$360.00
Process Unclaimed Funds	Flat Fee	\$750.00	1	\$750.00
Declaration	Hourly	\$125.00	3	\$375.00

Subtotal \$1,785.00

Total Case Estimate: \$12,550.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintains reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.