

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Kristina Bui Carlson, Esq. [CSB No. 294924]
kristina@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

RICHARD HARPER, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

HAMNER TOWING, INC., a California
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CIVSB 2127523
*[Assigned to Hon. Judge David Cohn, Dept
S26, for all purposes]*

**DECLARATION OF BRIAN J. MANKIN
IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing

Date: March 9, 2023

Time: 10:00 a.m.

Dept.: S26

Complaint filed: October 4, 2021

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I manage the employment department within my firm where I am also a Partner. I represent Plaintiff in this action and I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

1 **COUNSEL'S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled over 500 employee vs. employer litigation matters during my 22
7 years in practice. Over the last 15 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled over 250 class action and representative
10 action wage/hour cases, and have been appointed by the court as class counsel and have received
11 final court approval and judgment in close to half of those actions to date, and anticipate
12 receiving final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered in excess of \$250
14 million in damages for my clients and the class members (who often work as nurses, ambulance
15 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
16 countless other trades). As of the end of last year, my team and I held the record for the largest
17 known PAGA-only case in California's history as of that time - a \$12.5 million-dollar court
18 approved settlement, which followed extensive litigation, summary adjudication and writs to the
19 CA Supreme Court against a Fortune 50 company (*Garcia v. Macy's*, San Bernardino Superior
20 Court).

21 5. I have tried two class and PAGA cases against Fortune 100 companies. In 2018, I
22 was lead counsel in a PAGA case that my firm tried to the bench in the Orange County Superior
23 Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case
24 against Walmart that was tried to the jury in District Court for the Central District, wherein the
25 jury awarded Plaintiffs over \$6 million. Following the successful outcome in trial, both cases
26 were appealed.

27 6. Over the last four or five consecutive years, I have been selected by my peers as a
28 "Super Lawyer" in Employment Litigation, a distinction that only 5% of lawyers receive.

BRIEF SUMMARY OF THE SETTLEMENT

7. Following a contested mediation, Plaintiff and Defendant (collectively, the “Parties”) continued additional negotiations and eventually entered into a Class Action and PAGA Settlement Agreement and Release of Claims resolving the wage and hour claims of the putative class (the “Settlement Agreement” or “S.A.”), which is attached hereto as **Exhibit 1**. The Settlement Agreement seeks to release and discharge Defendants from the claims brought against it in exchange for Defendants’ agreement to pay \$290,000 on a non-reversionary, non-claims made basis (each Class Member will receive his/her share of the Net Settlement Amount without having to submit a claim form or take any action, except for those who opt-out). Plaintiff seeks to represent a class of all current and former non-exempt employees employed by Defendant Hamner Towing, Inc. in California at any time during the Class Period of October 4, 2017, through March 9, 2023. Under the terms of the Settlement Agreement, Defendant will not oppose Class Counsel’s application for a reasonable award of attorneys’ fees not to exceed one-third of the Settlement Amount, Class Counsel’s litigation expenses not to exceed \$20,000, settlement administrator costs of \$6,500, PAGA Penalties of \$30,000 of which \$22,500 will be paid to the LWDA and the remaining \$7,500 will be paid to the Aggrieved Employees, and a service award not to exceed \$5,000 to Plaintiff. After subtracting these deductions from the Settlement Amount, approximately \$131,833.33 will be available to pay individual settlement amounts to approximately 135 Class Members who do not opt-out of the settlement, as follows:

<i>Gross Settlement Amount</i>	\$ 290,000.00
Attorneys’ Fees (1/3)	\$ 96,666.67
Litigation Costs (not to exceed)	\$ 20,000.00
Administrator Costs	\$ 6,500.00
PAGA Penalties	\$ 30,000.00
Class Representative Service Award	\$ 5,000.00
<i>Net Settlement Amount</i>	\$ 131,833.33

8. Assuming 135 Class Members, the average payment to each Class Member will be approximately \$976.54 (\$131,833.33 / 135). However, the actual payment will be calculated on a pro-rata basis according to the number of Weeks Worked by each Class

1 Member during the Class Period, with each Work Week having a value of approximately
2 \$12.68 (\$131,833.33 / 10,400 estimated Work Weeks).

3 9. Each Class Member will receive the Class Notice, explaining the nature of the
4 case, and the process for participating, objecting and opting-out, and advising of his/her
5 estimated settlement payment and the number of Weeks Worked he/she is credited with
6 working during the Class Period.

7 **PROCEDURAL BACKGROUND**

8 10. My office has performed considerable work and diligently investigated and
9 prosecuted this case to a successful conclusion. Our work has resulted in the creation of a
10 significant settlement fund for the benefit of the Class. We efficiently communicated and
11 exchanged information informally with Defense counsel which enabled the parties to
12 successfully settle the case. Because of the risks involved in litigating the case and the contested
13 legal and factual issues, my office believes this settlement to be fair, reasonable, and adequate.

14 11. After being retained by Plaintiff, we submitted on October 1, 2021, letter to the
15 California Labor Workforce Development Agency (the "LWDA") for civil penalties under the
16 Private Attorney General Act of 2004 (the "PAGA"), and simultaneously sent a letter to
17 Defendant requesting the production of Plaintiff's personnel and timekeeping records to further
18 evaluate the wage and hour claims. The LWDA ultimately declined to assert jurisdiction over
19 the PAGA, thereby giving Plaintiff the right to bring PAGA claims.

20 12. On October 4, 2021, we filed a complaint alleging class action causes of action
21 against Defendant for (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3)
22 failure to provide meal periods; (4) failure to provide rest breaks; (5) failure to reimburse
23 business expenses; (6) failure to timely pay final wages; (7) failure to provide accurate itemized
24 wage statements; and (8) unfair and unlawful competition. On December 6, 2021, we filed a first
25 amended complaint to add related claims under PAGA.

26 13. Defendant retained counsel and immediately began to defend the case. My office
27 propounded written discovery and Defendant provided responses. However, my office alleged
28 that Defendant's discovery responses were non-compliant or incomplete. The Parties began to

1 meet and confer over the discovery issues. Shortly thereafter discussions among counsel, the
2 Parties agreed to attend private mediation.

3 14. In preparation for the mediation, the Parties informally exchanged documents and
4 information that allowed both sides to calculate the potential damages and evaluate potential risk,
5 including policies and procedures pertaining to each claim alleged, and statistics relating to the
6 number of current and former employees, number of shifts, pay periods worked and other things.
7 Defendant also provided their written policies and practices and a robust sampling of payroll and
8 timekeeping records for Class Members. This information enabled both parties to take a deep
9 dive into the claims. Additionally, during this process, Plaintiff and their counsel analyzed,
10 researched, and investigated the potential issues, including matters related to the calculation of
11 damages, trial, and appellate issues and risks.

12 15. On October 11, 2022, Plaintiff and Defendant participated in mediation before
13 Hon. Nancy Wieben Stock (Ret.), a well-respected wage-and-hour mediator. The mediation was
14 successful, and the Parties reached a global settlement that resolved all claims brought Plaintiff.
15 Now the Parties seek the Court's preliminary approval of the Settlement.

16 **THE WAGE AND HOUR CLAIMS, CLASS COUNSEL'S INVESTIGATION, AND**
17 **EVALUATION OF THE SETTLEMENT**

18 16. The putative Class in this case consists of approximately 135 similarly situated
19 non-exempt employees employed by Defendant in California at any time during the Class
20 Period. Plaintiff alleged numerous wage and hour violations on behalf of the Class Members.
21 However, Defendant vigorously contested and denied each of Plaintiff's material allegations on
22 the merits and as to the propriety of a class action or PAGA representative action, as discussed
23 herein.

24 17. In preparation for mediation, Kristina Bui Carlson, an associate within my firm,
25 and I formulated a damages model and risk analysis based upon detailed data obtained through
26 informal discovery and information exchanges. The summary of the claims below is based on
27 calculations by our expert and us, and the risks that we potentially faced, giving significant credit
28 to the defenses that Defendant raised or would like raise in further proceedings. Following the

informal exchange and other information provided by Defendant, we estimated the following data points through the date of mediation: (1) 135 class members, (2) 69 class members that separated from employment during the 3-year lookback for Labor Code § 203, (3) 10,400 workweeks, (4) 52,000 shifts worked, and (4) approximately 2,080 wage statements during the PAGA Period. From these metrics, and when factoring in claim certification probabilities and liability probabilities, we formulated detailed damages models to value the claims in preparation for mediation and to reach a realistic and reasonable resolution.

18. Here, there were three primary categories of claims alleged by Plaintiffs: (1) unpaid wage claims under various theories, (2) meal and rest break violations, and (3) derivative claims for waiting time and wage statement penalties due to the other alleged violations.

19. As to the unpaid wage claims, Plaintiff alleged Defendant failed to pay proper overtime when Class Members worked more than 8 hours in a day. Furthermore, when Defendant paid overtime, it failed to factor in non-discretionary compensation (*e.g.*, bonuses and commissions) received by Class Members into calculating the regular rate of pay. In total, Plaintiff's counsel estimated the maximum value of these unpaid wages to be \$156,000.

20. However, Defendants vehemently opposed these unpaid wage claims on the merits and as to the propriety of class certification. For example, Defendants argued that the majority of employees worked out on the field alone, completed their own timesheets, approved their own timesheets, and when employees reported overtime, it was paid. Moreover, in addition to its other defenses on the merits, Defendants argued that Plaintiffs would be unable to meet its evidentiary burden at summary judgment and/or trial because Plaintiffs and the Class would be unable to introduce evidence as to the amount of unpaid wages (since the claims are not apparent from the timekeeping records alone), thus defeating liability. Furthermore, Defendants argue a lack of commonality due to the fact that there are a number of varying job positions and duties of non-exempt employees.

21. Due to these defenses and arguments, Plaintiff assigned a 30% risk for the unpaid overtime claim at the class certification stage. And, due to the defenses as to the merits, Plaintiff assigned the following merits-based risk to each claim: a 20% risk on the unpaid overtime claim.

1 In sum, Plaintiff's counsel calculated the risk-adjusted value of the unpaid wage claims as
2 \$87,360.

3 22. Plaintiff also alleged meal and rest break claims against Defendant. Given the
4 total number of shifts at issue (an estimate of 52,000), and when incorporating violation rates
5 from review of the timekeeping records and other evidence, Plaintiff's counsel estimated a 75%
6 violation rate for meal breaks and a 30% violation rate for rest breaks, leading to 39,000 alleged
7 meal violations and 15,600 alleged rest break violations. This established a maximum potential
8 value for these claims of \$723,450 (54,600 violations multiplied by the average hourly rate of
9 \$13.25 as the applicable premium rate under § 226.7).

10 23. However, Defendant raised numerous arguments in response to this claim,
11 including that it maintained fully compliant written policies and specifically authorized the Class
12 Members to take meal and rest breaks, meaning that no one had a reason or cause to miss a break
13 or take a short/late break. Therefore, Defendant asserted that a fact-finder would have to
14 determine for each Class Member whether a break was missed and why, and why a break was
15 noncompliant or nonexistent, because if it was by the employee's choice, no liability attaches to
16 Defendant. These defenses are factored into Plaintiff's analysis in two ways. First, these issues
17 raise questions regarding whether the meal and rest break claims could be certified, and second
18 these defenses also go toward the merits given the evidentiary question of proving the number of
19 meal and rest violations. As such, Plaintiff placed a 30% risk on the meal break claim, and a
20 30% risk on the rest break claim, resulting in a risk-adjusted value for the combined meal and
21 rest break claims at \$405,132.

22 24. Finally, Plaintiff alleged claims for waiting time penalties and wage statement
23 violations. But these claims were entirely derivative of the claims above, meaning that they only
24 had merit if the claims for unpaid wages or meal/rest breaks were successful. The maximum
25 values for these claims were as follows: (1) \$274,275 for waiting time penalties [69 former
26 employees x \$13.25 per hour x 10 hours per day x 30 days], and (2) \$198,000 for wage statement
27 violations [2,080 wage statements at the \$50/\$100 formula under § 226(e)].

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1 25. But Defendant raised a variety of defenses to these derivative claims that
2 impacted the valuation. Namely, as to the wage statement violations, Defendant argued that its
3 wage statements did not violate Labor Code § 226 and, even if there was a “technical” violation,
4 that Plaintiff would be unable to prove the required “knowing and intentional” and “injury”
5 elements. Based on these facts and defenses, Plaintiff placed a 20% risk at class certification
6 (mirroring the claims on which the wage statement claim was based) and estimated another 20%
7 risk the merits, leading to a risk-adjusted value of \$126,720 for the wage statement claims.

8 26. Then, as to the waiting time penalty claim, Plaintiff’s valuation had to account for
9 the fact that this claim was derivative of the unpaid wage and meal/rest break claims (*e.g.*, the
10 unpaid wage premiums) and, if those claims failed at certification or on the merits, there would
11 be no waiting time penalties owed, so the same risks for those claims applied to this claim.
12 Furthermore, even if the unpaid wage and/or meal/rest claims succeeded at certification and on
13 the merits, Plaintiff would have to prove that the violations (if any existed) were “willful” under
14 the meaning of Labor Code § 203. And, here, Defendant argued that there could not be a finding
15 of a “willful” violation since they had compliant written policies and any deviations therefrom
16 were inadvertent and unintentional. As a result of this analysis, Plaintiff’s counsel applied a 20%
17 risk at class certification and a 20% risk on the merits, leading to a risk-adjusted value of
18 \$175,536.

19 27. In sum, when factoring in the defenses and risks of ongoing litigation, Plaintiff
20 estimates the risk-adjusted class recovery as follows:

21	• Unpaid Wage Claims	\$ 87,360
22	• Meal and Rest Break Claims	\$ 405,132
23	• Wage Statement Claims	\$ 26,720
24	• Waiting Time Penalty Claims	<u>\$ 175,536</u>
25	• Total Risk Adjusted Penalties and Damages	\$ 794,748

26 **THE SETTLEMENT IS FAIR, JUST, AND REASONABLE**

27 28. The settlement was the product of extensive arm’s length negotiations, facilitated
28 by an experienced mediator. Though cordial and professional, the settlement negotiations were

1 adversarial and non-collusive in nature. The settlement reached is the product of substantial
2 effort by the parties and their counsel. Although we believed that there was a possibility of
3 certifying the claims, we recognized the potential risk, expense, and complexity posed by
4 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or
5 on the damages awarded, and/or on an appeal that can take several more years to litigate.

6 29. The settlement will result in a fair payment to each class member based on the
7 number of Weeks Worked during the Class Period. As set forth hereinabove, Plaintiff and his
8 counsel have diligently investigated the claims and defenses on behalf of the Class Members and
9 worked to achieve a resolution of the claims to maximize the recovery by avoiding further
10 expenditure of attorneys' fees and costs. After evaluating the significant risks attendant with
11 further litigation described above and weighing them against the benefits of a known
12 compromise and settlement as set forth in the Settlement Agreement, settlement on the terms
13 agreed to is believed to be in the best interest of Plaintiff and the Class, and is a fair and
14 reasonable resolution of the claims alleged.

15 30. Plaintiff's counsel brought to bear a great deal of experience in negotiating the
16 settlement of this case. As detailed herein, Plaintiff's counsel engaged in the necessary discovery
17 and investigation, making it possible to exercise informed judgment throughout the settlement
18 process, including significant document review (*e.g.*, documents pertaining to Defendant's
19 policies and procedures, personnel documents, among others), and conducted an extensive
20 analysis of the detailed class-wide data provided by Defendant.

21 31. Based on my experience in other cases, including wage and hour matters, I
22 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
23 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
24 settlement at this time is in the best interests of the class. The settlement provides each class
25 member with compensation for the alleged violations when viewed in relation to the costs and
26 risks inherent in obtaining class certification and proceeding to trial.

27 32. Plaintiff's counsel, as well as Defendant's counsel, fully endorse the terms and
28 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

1 33. Of course, the settlement amount represents a compromise figure, taking into
2 account the various risks surrounding class certification and the merits of Defendant's asserted
3 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
4 members, with no reversion to Defendant.

5 **PLAINTIFF'S REQUESTED ENHANCEMENT PAYMENT**

6 34. Plaintiff seeks an enhancement payment of \$10,000 for his service to the Class,
7 which I believe is fair and warranted. Mr. Constant came forward in an effort to effectuate a
8 policy and practice change that benefitted all other Class Members, and to recover unpaid wages.
9 They each assumed significant risk in bringing this litigation—namely, had he lost, he would
10 have been ordered to pay Defendant's costs.

11 35. Plaintiff provided invaluable assistance to my office and the Class in this case,
12 including providing factual background for the Class Complaint; reviewing the litigation
13 documents; providing information and documents about Defendant's policies and practices;
14 participating in phone calls to discuss litigation and settlement strategy; and reviewing the
15 settlement documents. Plaintiff agreed to participate in this case with no guarantee of personal
16 benefit. At final approval, Plaintiff will submit a comprehensive declaration setting forth all of
17 the reasons why he believes that the service award should be approved.

18 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
19 **REQUESTED FEES AND COSTS**

20 36. As set forth above, I have handled over 250 class and representative actions, have
21 been appointed as class counsel and have successfully resolved over half of those cases, and
22 many others remain pending and will successfully resolve in the future.

23 37. When this case was taken on a contingency fee basis, with my firm agreeing to
24 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
25 course of this litigation, my firm and my co-counsel paid all costs including filing fees, court
26 costs, research fees, and mediation costs. There was never a guarantee that we would recoup
27 those expenditures.

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1 38. It is my experience that attorney fee awards of one-third of a common fund
2 settlement is the standard in California. In this case, Plaintiff's counsel agreed to seek one-third
3 of the Settlement Amount for attorneys' fees. Defendants do not oppose this fee request. The fee
4 is further warranted because it is within the range of reasonableness typically awarded in class
5 actions. The litigation costs are reasonably capped at \$20,000 and will be based on the actual
6 amount of costs incurred at the time of final approval.

7 **SETTLEMENT ADMINISTRATOR**

8 39. The parties request that the Court appoint Phoenix Settlement Administrators to
9 serve as the Settlement Administrator. Phoenix is experienced in administering class action
10 settlements, and has provided a proposal to administer this settlement for a total of \$6,500, which
11 is attached hereto as **Exhibit 4**.

12 **SUBMISSION TO THE LWDA**

13 40. Plaintiffs have concurrently submitted the settlement to the LWDA in accordance
14 with Labor Code § 2699(1)(2). The proof of submission is attached hereto as **Exhibit 5**.

15 **EXHIBITS AND CONCLUSION**

16 41. A true and correct copy of the Settlement Agreement is attached as **Exhibit 1**.

17 42. The proposed Class Notice is attached as **Exhibit 2**.

18 43. A true and correct copy of the notice letter we submitted to the LWDA is attached
19 as **Exhibit 3**.

20 44. Phoenix's proposal to administer the Settlement is attached hereto as **Exhibit 4**.

21 45. The LWDA's confirmation of receipt of this Motion and Declarations is attached
22 hereto as **Exhibit 5**.

23 46. For the foregoing reasons, it is respectfully requested that the Court grant
24 preliminary approval of the settlement as being fair, reasonable, and in the best interests of the
25 class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement
26 payment to the Class Representative.

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1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct. Executed on February 14, 2023 at Riverside, California.

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4 By: 
5 Brian J. Mankin, Esq.
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EXHIBIT “1”

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Kristina Bui Carlson, Esq. [CSB No. 294924]
kristina@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

Kevin M. Erwin, Esq.
kevin.erwin@jacksonlewis.com
JACKSON LEWIS P.C.
200 Spectrum Center Drive, #500
Irvine, CA 92618
Tel: 949-885-1360 | F: 949-885-1380

Attorneys for Defendant HAMNER TOWING, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
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RICHARD HARPER, individually, on a
representative basis, and on behalf of all
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S26, for all purposes]*

**CLASS ACTION AND PRIVATE
ATTORNEY GENERAL ACT
SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

1 This Class Action and Private Attorney General Act (“PAGA”) Settlement Agreement
2 and Release of Claims is entered into by and between Plaintiff Richard Harper, individually and
3 on behalf of all others similarly situated, and Defendant Hamner Towing, Inc., and is approved
4 by their respective counsel of record, subject to the terms and conditions hereof and the Court’s
5 approval.

6 **A. Definitions**

7 1. “Action” or “Lawsuit” means and refers to the case entitled *Richard Harper v.*
8 *Hamner Towing, Inc., et al.*, San Bernardino County Superior Court, Case No. CIVSB2127523.

9 2. “Agreement,” “Settlement Agreement” or “S.A.” or shall mean this Class Action
10 and Private Attorney General Act Settlement Agreement and Release of Claims, including any
11 attached Exhibits.

12 3. “Aggrieved Employees” means all current and former nonexempt employees
13 employed by Defendant in California at any time during the PAGA Period.

14 4. “Class Counsel” refers to Brian Mankin and Kristina Bui Carlson of Lauby,
15 Mankin & Lauby LLP.

16 5. “Class Data” means a complete list that Defendant will diligently and in good
17 faith compile from its records and provide to the Settlement Administrator on one spreadsheet
18 and shall include the Settlement Class Members’ full names; last known addresses; telephone
19 numbers; Social Security Numbers; the total Weeks Worked during the PAGA Period for each
20 Aggrieved Employee, and the total Weeks Worked during the Class Period for each Settlement
21 Class Member.

22 6. “Class Period” is deemed to be any time during the period of October 4, 2017,
23 through the Preliminary Approval Date or March 9, 2023, which ever date is earlier.

24 7. “Class Representative” or “Plaintiff” means and refers to Richard Harper.

25 8. “Complaint” refers to the operative first amended complaint on file alleging class
26 and representative PAGA claims, filed in the San Bernardino County Superior Court on
27 December 6, 2021, in the matter of *Richard Harper v. Hamner Towing, Inc., et al.*, San
28 Bernardino County Superior Court Case No. CIVSB2127523.

1 9. “Court” (or “Judge”) means the California Superior Court, County of San
2 Bernardino.

3 10. “Defendant” means and refers to Hamner Towing, Inc.

4 11. “Defendant’s Counsel” or “Defense Counsel” means and refers to Jackson Lewis
5 P.C.

6 12. “Effective Date” means the latest of the following dates: (i) if no Class Member
7 timely and properly intervenes or files a motion to vacate the Judgment under Code of Civil
8 Procedure § 663, then the date the Court enters an order granting Final Approval of the
9 Settlement; (ii) if a Class Member intervenes or files a motion to vacate the Judgment, then
10 sixty-one (61) calendar days following the date the Court enters an order granting final approval,
11 assuming no appeal is filed; or (iii) if a Class Member timely and properly intervenes or files a
12 motion to vacate the Judgment under Code of Civil Procedure § 663, and if a timely appeal is
13 filed, then the date of final resolution of that appeal (including any requests for rehearing and/or
14 petitions for certiorari), resulting in final judicial approval of the Settlement.

15 13. “Escalator Clause” means if the total number of Weeks Worked by the Class
16 Members is 10% greater or more than the estimated 11,500 Weeks Worked during the Class
17 Period (i.e., more than 13,225 workweeks), then the Maximum Settlement Amount shall increase
18 by \$25.21 (\$290,000 divided by 11,500) for each additional workweek above 13,225.

19 14. “Final Approval” refers to the order of the Court granting final approval of this
20 Settlement Agreement and entering a judgment approving this Agreement on substantially the
21 terms provided herein or as the same may be modified by subsequent agreement of the Parties.

22 15. “Final Settlement Class” means, collectively, all Settlement Class Members who
23 have not opted out of the Settlement Class by submitting timely Requests for Exclusion.

24 16. “Individual Settlement Payment” shall have the meaning ascribed to it in
25 Paragraph 48(c) below.

26 17. “Maximum Settlement Amount” shall have the meaning ascribed to it in
27 Paragraph 48(a) below.

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1 18. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 48(b)
2 below.

3 19. “Notice” means the notice of settlement of class action that will be sent to the
4 Settlement Class Members.

5 20. “Notice Response Deadline” is 30 calendar days from the date the Notice is
6 mailed to the Settlement Class Members.

7 21. “Objecting Settlement Class Member” means a Settlement Class Member, other
8 than Plaintiff, who submits a valid and timely objection to the terms of this Agreement, pursuant
9 to Paragraph 69(c) below.

10 22. “PAGA Penalties” means the amount that the Parties have agreed to pay to the
11 Labor and Workforce Development Agency (“LWDA”) in connection with the California Labor
12 Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”), as well
13 as the individual PAGA payment allocated to each Aggrieved Employee.

14 23. “PAGA Period” is deemed to be any time during the period of October 4, 2020,
15 through the Preliminary Approval Date or March 9, 2023, whichever date is earlier.

16 24. “PAGA Released Claims” by the Aggrieved Employees upon Final Approval of
17 the Settlement will include means any and all PAGA claims that Plaintiff alleged against the
18 Released Parties, on behalf of Aggrieved Employees and State of California, based on the facts
19 stated in Plaintiff’s Complaint and in Plaintiff’s LWDA notice letter, including all PAGA claims
20 seeking civil penalties premised upon: (a) failure to pay minimum wages, (b) failure to pay
21 overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure
22 to reimburse business expenses, (f) failure to failure to timely pay wages each period and upon
23 separation of employment, (g) failure to provide accurate itemized wage statements, and (h) all
24 other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code
25 §§ 2698 *et seq.* based on the facts or claims alleged in the Complaint. The time period governing
26 the PAGA Released Claims shall be any time during the PAGA Period. The PAGA Released
27 Claims do not release any Aggrieved Employee’s claims for wages or statutory penalties.

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1 25. “Participating Class Member” means any and all Settlement Class Members who
2 are deemed to participate and receive an Individual Settlement Payment and do not opt-out by
3 submitting timely valid Requests for Exclusion.

4 26. “Parties” or “Settling Parties” mean Plaintiff, the Settlement Class, and
5 Defendant, collectively.

6 27. “Preliminary Approval Date” means the date the Court approves the Settlement
7 Agreement, and the exhibits thereto, and enters the Preliminary Approval Order.

8 28. “Preliminary Approval Order” means the judicial Order to be entered by the
9 Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement
10 and providing for the issuance of the Notice to the Settlement Class, an opportunity to opt out of
11 the Settlement, an opportunity to submit timely objections to the Settlement, and setting a
12 hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees and
13 costs. Defendant will be provided with an opportunity to review and comment upon the motion
14 for preliminary approval at least five days before it is filed. Thereafter, Defendant will not object
15 to the motion.

16 29. “QSF” means the Qualified Settlement Fund set up by the Settlement
17 Administrator for the benefit of the Final Settlement Class, and from which the settlement
18 payments shall be made, and which is intended to be a fund that qualifies under Internal Revenue
19 Code Sec. 468.

20 30. “Released Claims” by the Participating Class Members upon Final Approval of
21 the Settlement will include any and all claims stated in the Complaint and those based solely
22 upon the facts in the Complaint, including: (a) failure to pay minimum wages, (b) failure to pay
23 overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure
24 to reimburse business expenses, (f) failure to failure to timely pay wages each period and upon
25 separation of employment, (g) failure to provide accurate itemized wage statements, (h) unfair
26 and unlawful competition, and (i) all other claims for statutory penalties based on the facts or
27 claims alleged in the Complaint.

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1 31. “Released Parties” means Defendant and its officers, directors, shareholders,
2 employees and agents.

3 32. “Release Period” shall be the time period governing the Released Claims which
4 shall be the same as the Class Period.

5 33. “Release” shall mean the release and discharge of the Released Claims by
6 Plaintiff and all of the Participating Class Members. The *res judicata* effect of the Judgment will
7 be the same as that of the Release.

8 34. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 69(a)
9 below.

10 35. “Service Payment” or “Service Award” means the amount approved by the Court
11 to be paid to the Class Representative, Richard Harper, in addition to his Individual Settlement
12 Payment as a Participating Class Member.

13 36. “Settlement Administrator” means and refers to Phoenix Settlement
14 Administration, the third-party class action settlement administrator agreed to by the Parties, that
15 will provide the Notice Packet to the Class Members and distribute the settlement amounts as
16 described in this Agreement.

17 37. “Settlement Administration Costs” means the costs payable from the Maximum
18 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
19 but not limited to, printing, distributing, and tracking documents for this Settlement, tax
20 reporting, and deposit of the employee and employer share of payroll taxes, unclaimed property
21 due diligence, reporting and remittance obligations, distributing the Maximum Settlement
22 Amount, and providing necessary reports and declarations, as requested by the Parties. The
23 Settlement Administration Costs shall be paid from the Settlement Amount, including, if
24 necessary, any such costs in excess of the amount represented by the Settlement Administrator as
25 being the maximum costs necessary to administer the Settlement.

26 38. “Settlement Class” consists of all current and former nonexempt employees
27 employed by Defendant in California at any time during the Class Period.

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39. “Settlement Class Member” or “Class Member(s)” refers to individual members of the Settlement Class.

40. “Work Weeks” or “Weeks Worked” for each Settlement Class Members means any and all weeks during the Class Period in which the Settlement Class Member was employed by Defendant and worked at least one shift during the week.

B. General Terms

41. Plaintiff filed a class action complaint on October 4, 2021, and subsequently filed his first amended class action and representative PAGA action complaint in the Court on December 6, 2021, against Defendant and Does 1 through 20. The operative Complaint alleges class and representative PAGA claims, including: (1) failure to pay minimum and regular wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to timely pay final wages, (7) failure to provide accurate itemized wage statements, (8) unfair and unlawful competition pursuant to Business and Professions Code §17200 *et seq.*, and (9) related claims under PAGA.

42. Defendant denies Plaintiff’s claims and allegations and contends that the Action is not suitable for class certification or manageable as a class or representative action.

43. The Class Representative believes he can proceed with his representative and class claims, that the Action is meritorious, and that class certification is appropriate.

44. The Parties have conducted a thorough investigation into the facts of the Action. This includes conducting an extensive exchange of informal discovery, including Defendant’s written policies and practices and the production of a sampling of payroll and timekeeping records for Settlement Class Members. Class Counsel is both knowledgeable about and has done extensive research with respect to the applicable law and potential defenses to the claims of the Settlement Class. Class Counsel has diligently pursued an investigation of the Class Members’ claims against Defendant. Based on the foregoing data and on their own independent investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendant for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members in light of all known facts and

1 circumstances, including the risk of significant delay and uncertainty associated with litigation,
2 various defenses asserted by Defendant, and numerous potential appellate issues.

3 45. On October 11, 2022, Plaintiff and Defendant participated in mediation before the
4 Hon. Nancy Wieben Stock (Ret.), a highly experienced wage and hour class action mediator. The
5 Parties reached a global resolution upon mutual acceptance of a mediator's proposal after a full
6 day of mediation.

7 46. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
8 to be performed or judgments to be entered pursuant to the terms of the Settlement and
9 Agreement, shall be construed as an admission by Defendant of any wrongdoing or violation of
10 any statute or law or liability on the claims or allegations in the Action.

11 47. Stipulation for Class Certification. For settlement purposes only, Defendant will
12 stipulate that the Settlement Class Members described herein who do not submit a Request for
13 Exclusion from the Settlement Class may be conditionally certified as a settlement class. This
14 stipulation to certification is in no way an admission that class action certification is proper and
15 shall not be admissible in this or in any other action except for the sole purposes of enforcing this
16 Agreement and resolving the administration of the Settlement. Should, for whatever reason, the
17 Court fail to issue Final Approval, the Parties' stipulation to class certification as part of the
18 Settlement shall become null and void *ab initio* and shall have no bearing on, and shall not be
19 admissible in connection with, the issue of whether or not certification would be appropriate in a
20 non-settlement context. Defendant expressly reserves its rights and declare that it would
21 continue to oppose class certification and the substantive merits of the case should the Court
22 decline to issue Final Approval. Plaintiff expressly reserves his rights and declares that he will
23 continue to pursue class certification and a trial should the Court decline to issue Final Approval.

24 **C. Terms of Settlement**

25 48. The financial terms of the Settlement are as follows:

26 (a) Maximum Settlement Amount: The Parties agree to settle this Action for
27 Two Hundred and Ninety Thousand Dollars (\$290,000.00) ("the Maximum Settlement
28 Amount"). The Maximum Settlement Amount is the maximum amount that will be paid, subject

1 to the Escalator Clause, and includes Individual Settlement Payments, Attorneys' Fees and Costs
2 Award, the Service Payment to the Class Representative, all Settlement Administration Costs,
3 and PAGA Penalties. Defendant shall separately pay the employers' share of their payroll tax
4 obligations, which shall be reported through the Settlement Administrator.

5 (b) Net Settlement Amount: The "Net Settlement Amount" is defined as the
6 Maximum Settlement Amount less the Attorneys' Fees and Costs Award, the Service Payment to
7 the Class Representative as awarded by the Court, the Settlement Administration Costs, and
8 PAGA Penalties. If the Court reduces the attorneys' fees, litigation costs, Service Award, or
9 Settlement Administrator Costs, the difference shall be placed in the Net Settlement Amount and
10 allocated to the Settlement Class.

11 (c) Individual Settlement Payments for the Settlement Class: Individual
12 Settlement Payments will be calculated and apportioned from the Net Settlement Amount based
13 on the number of Work Weeks a Settlement Class Member worked during the Class Period.
14 Specific calculations of Individual Settlement Payments will be made as follows:

- 15 • Defendant will calculate the total number of Work Weeks worked by each
16 Settlement Class Member during the Class Period and the aggregate total
17 number of Work Weeks worked by all Settlement Class Members during the
18 Class Period.
- 19 • To determine each Settlement Class Member's estimated Individual
20 Settlement Payment, the Settlement Administrator will use the following
21 formula: The Net Settlement Amount will be divided by the aggregate total
22 number of Work Weeks, resulting in the "Work Week Value." Each
23 Settlement Class Member's Individual Settlement Payment will be calculated
24 by multiplying his or her total number of Work Weeks during the Class Period
25 by the Work Week Value.
- 26 • Individual Settlement Payments will be reduced by any required deductions
27 for each Participating Class Member as specifically set forth herein, including
28 employee-side tax withholdings or deductions.

- The entire Net Settlement Amount will be disbursed to all Participating Class Members. If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionally increase the Individual Settlement Payment for each Participating Class Member according to the number of Work Weeks worked, so that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement Amount.

(d) Allocation of Individual Settlement Payments: Since the primary claim in the action relates to statutory and civil penalties (for wage statement violations), the majority of the allocation will be for interest and penalties, rather than wages. To that end, the Individual Settlement Payments will be allocated based on the allegations in the Action as follows: one-fourth (1/4) will be allocated as wages subject to withholding of all applicable local, state and federal taxes; and the remaining three-fourths (3/4) will be allocated between interest and penalties (pursuant to, e.g., California Labor Code sections 203, 210, 226, 2699) from which no taxes will be withheld. The Settlement Administrator will issue to each Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect to the penalties and interest allocations.

(e) Service Payment to Class Representative: The amount, if any, awarded to the Class Representative as a Service Payment will be set by the Court in its discretion, not to exceed \$5,000.00, in exchange for the services Plaintiff performed on behalf of the Class and for entering into the general and expansive release discussed hereinafter. Defendant agrees not to oppose this request. The Service Payment to Plaintiff will be paid out of the Maximum Settlement Amount. The Class Representative will be issued IRS Form 1099 in connection with this payment. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on this payment. The Parties agree that any amount awarded as the Service Payment to Plaintiff less than the requested amount shall not be a basis for Class Counsel to void this Settlement Agreement. Should the Court approve a lesser amount for the Service Payment, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members.

1 (f) Attorneys' Fees and Costs Award: Defendant agree to not oppose a
2 request by Class Counsel to the Court for an award of attorneys' fees of one-third of the
3 Maximum Settlement Amount, plus reasonable litigation costs not to exceed \$20,000.00
4 ("Attorney's Fees and Cost Award"). Defendant agrees not to oppose any contention by Class
5 Counsel that attorneys' fees should be based on the common fund theory. The Attorney's Fee
6 and Cost Award shall be paid from the Maximum Settlement Amount, and except for this award,
7 Defendant shall have no further obligation to pay any attorneys' fees, costs or expenses to Class
8 Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel, the
9 difference shall be added to the Net Settlement Amount to be distributed to the Participating
10 Class Members. Any Court order awarding less than the amount sought by Class Counsel shall
11 not be grounds to rescind the Settlement Agreement or otherwise void the Settlement. The
12 Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount
13 of attorneys' fees and costs awarded by the Court.

14 (g) Settlement Administration Costs: The fees and other charges of the
15 Settlement Administrator will be paid from the Maximum Settlement Amount, not to exceed
16 \$6,500, unless approved by all Parties and the Court.

17 (h) PAGA Penalties: The Parties agree that \$30,000.00 is allocated to PAGA
18 Penalties, and is to be paid from the Maximum Settlement Amount, subject to Court approval.
19 Of this amount, \$22,500.00 (75%) shall be paid to the LWDA in satisfaction of civil penalties
20 under the Private Attorney General Act of 2004 ("PAGA") and \$7,500.00 (25%) will be paid to
21 the Aggrieved Employees on a Work Week basis, which will be treated entirely as civil penalties
22 and shall be reported as required on an IRS form 1099. Class Counsel shall give proper notice to
23 the LWDA of the Settlement.

24 (i) Tax Liability: Class Counsel and Defendant make no representations as to
25 the tax treatment or legal effect of Settlement Amounts called for hereunder, and Plaintiff and the
26 Settlement Class Members are not relying on any statement or representation by Class Counsel
27 or Defendant in this regard. Plaintiff and Participating Class Members understand and agree that
28 they will be solely responsible for the payment of any taxes and penalties assessed on their

1 respective Settlement Amounts described herein. The amount of federal income tax withholding
2 will be based upon a flat withholding rate for supplemental wage payments in accordance with
3 Treas. Reg. § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also
4 be made pursuant to applicable state and/or local withholding codes or regulations. Forms W-2
5 and/or Forms 1099 will be distributed at times and in the manner required by the Internal
6 Revenue Code of 1986 (the “Code”) and consistent with this Agreement. If the Code, the
7 regulations promulgated thereunder, or other applicable tax law, is changed after the date of this
8 Agreement, the processes set forth in this Section may be modified in a manner to bring
9 Defendant into compliance with any such changes. Plaintiff and Participating Class Members
10 understand and agree that they will be solely responsible for the payment of any taxes assessed
11 on their respective payments described herein.

12 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
13 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
14 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
15 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
16 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
17 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
18 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
19 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
20 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
21 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
22 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, his OR ITS
23 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
24 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
25 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
26 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
27 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
28 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY

1 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
2 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
3 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
4 ADVISER'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
5 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
6 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
7 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

8 49. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
9 Participating Class Members under this Agreement, as well as any other payments made
10 pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any
11 benefit plans to which any Settlement Class Members may be eligible, including, but not limited
12 to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase or other types of equity plans,
13 vacation plans, sick leave plans, PTO plans, ESOP plans, and any other benefit plan. The Parties
14 agree that the amounts paid pursuant to this Settlement are not for days or hours worked, and are
15 not included toward any regular rate of pay calculation, or any benefit vesting or accrual
16 purpose.

17 50. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under
18 no circumstances will any portion of the Maximum Settlement Amount revert to Defendant.
19 Participating Class Members will not have to make a claim in order to receive an Individual
20 Settlement Payment. Distributions, in the form of Individual Settlement Payments, will be made
21 directly to each Participating Class Member. The Settlement Administrator shall be responsible
22 for accurately and timely reporting and remittance obligations with respect to unclaimed funds as
23 a result of a Participating Class Member not cashing an Individual Settlement Payment by the
24 check cashing deadline, as set forth herein.

25 51. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and
26 adequate, and will so represent same to the Court.

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1 **D. Release by Plaintiff, the Aggrieved Employees and the Settlement Class**

2 52. Upon entry of the Final Approval Order and Defendant's funding of the
3 Settlement Amount, and except as to such rights or claims as may be created by this Settlement
4 Agreement, the Participating Class Members will forever completely release and discharge the
5 Released Parties from the Released Claims for the Release Period.

6 53. Upon entry of the Final Approval Order and Defendant's funding of the
7 Settlement Amount, the State of California and Aggrieved Employees shall completely release
8 and discharge the Released Parties from the PAGA Released Claims for the PAGA Period.

9 54. Each Settlement Class Member will be deemed to have made the foregoing
10 Release as if by manually signing it.

11 55. Plaintiff and Defendant intend that the Settlement described in this Agreement
12 will release and preclude any further claim, whether by lawsuit, administrative claim or action,
13 arbitration, demand, or other action of any kind, by each and all of the Participating Class
14 Members to obtain a recovery based on, arising out of, and/or related to any and all of the
15 Released Claims. The Class Members shall be so notified in the Notice. This paragraph does not
16 apply to any Class Member who timely and validly opts out of the Settlement.

17 56. Class Representative, on behalf of himself and the Settlement Class,
18 acknowledges and agrees that the claims for unpaid wages and unreimbursed expenses in the
19 Action, and untimely payment of wages in the Action, are disputed, and that the payments set
20 forth herein constitute payment of all sums allegedly due to them. Class Representative, on
21 behalf of himself and the Settlement Class, acknowledges and agrees that California Labor Code
22 Section 206.5 are not applicable to the Parties hereto. Section 206.5 provides in pertinent part as
23 follows:

24 An employer shall not require the execution of any release of any claim or
25 right on account of wages due, or to become due, or made as an advance on
26 wages to be earned, unless payment of those wages has been made.

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1 **E. Release by Class Representative**

2 57. Except for the separate confidential individual settlement agreement between
3 Plaintiff and Defendant (the “Individual Agreement”), Class Representative does hereby, for
4 himself and for his respective spouses, heirs, and assigns forever and completely release and
5 discharge the Released Parties from any and all charges, complaints, claims, liabilities,
6 obligations, promises, agreements, controversies, damages, actions, causes of action, suits,
7 rights, demands, costs, losses, debts, and expenses (including back wages, statutory penalties,
8 civil penalties, liquidated damages, exemplary damages, interest, attorneys’ fees, and costs) of
9 any nature whatsoever, from the beginning of time through the execution of this Agreement,
10 whether known or unknown, suspected or unsuspected, including but not limited to all claims
11 arising out of, based upon, or relating to Class Representative’s employment with Defendant or
12 the remuneration for or termination of such employment, except for the claims and settlement of
13 his individual claims as set forth in the Individual Agreement (collectively, the “Class
14 Representative’s Claims”).

15 58. Without limiting the generality of the foregoing, this general release by Class
16 Representative includes all federal, state and local statutory claims, federal and state common
17 law claims (including but not limited to those for contract, tort and equity), including without
18 limitation the Americans with Disabilities Act, Age Discrimination in Employment Act, Title
19 VII of the Civil Rights Act of 1964 (as amended), 42 USC sec. 1981, 42 USC sec. 1983, the Fair
20 Labor Standards Act, the Employment Retirement Security Income Act of 1974, the California
21 Constitution, the California Fair Employment and Housing Act, the California Unfair
22 Competition Act (California Business and Professions Code section 17200 et seq.), and the
23 California Labor Code, except for the Individual Claims.

24 59. Class Representative agrees that there is a risk that any injury that he may have
25 suffered by reason of the Released Parties’ relationship with his might not now be known, and
26 there is a further risk that said injuries, whether known or unknown at the date of this Settlement
27 Agreement, might possibly become progressively worse, and that as a result thereof further
28 damages may be sustained. Nevertheless, Class Representative agrees to forever and fully

1 release and discharge the Released Parties, and understands that by the execution of this
2 Settlement Agreement no further claims for any such injuries that existed at the time of the
3 execution of this Settlement Agreement may ever be asserted by Class Representative with
4 respect to claims arising in the time period from the beginning of time to the execution of this
5 Settlement Agreement.

6 60. Class Representative expressly waives and relinquishes all rights and benefits
7 afforded by Section 1542 of the Civil Code of the State of California and does so understanding
8 and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil
9 Code of the State of California states:

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

15 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
16 full and complete release and discharge of all parties, Class Representative and Class Counsel
17 expressly acknowledge that this Settlement Agreement is intended to include in its effect,
18 without limitation, all claims that Class Representative knew of, as well as all claims that he does
19 not know or suspect to exist in his favor against the Released Parties, or any of them, for the time
20 period from the beginning of time to the execution of this Settlement Agreement, and that this
21 Settlement Agreement contemplates the extinguishment of any such Class Representative's
22 claims. Notwithstanding the above, the general release by Class Representative shall not extend
23 to claims for workers' compensation benefits, claims for unemployment benefits, or other claims
24 that may not be released by law.

25 **F. Interim Stay of Proceedings**

26 61. Pending completion of all of the prerequisites necessary to effectuate this
27 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action
28 except such as are necessary to effectuate the Settlement.

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1 **G. Notice Process**

2 62. Appointment of Settlement Administrator. The Parties have agreed to the
3 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
4 including mailing the Notice, using standard devices to obtain forwarding addresses,
5 independently reviewing and verifying documentation associated with any claims or opt-out
6 requests, resolving any disputes regarding the calculation or application of the formula for
7 determining the Individual Settlement Payments, drafting and mailing the settlement checks to
8 Participating Class Members, issuing W-2 and 1099 Tax Forms, unclaimed funds due diligence,
9 reporting and remittance obligations, and performing such other tasks as set forth herein or as the
10 Parties mutually agree or that the Court orders.

11 63. Disputes Regarding Settlement Administration. Any and all disputes relating to
12 administration of the Settlement by the Settlement Administrator (except for disputes regarding
13 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction
14 over the terms and conditions of this Settlement Agreement, until Plaintiff and Defendant notify
15 the Court that all payments and obligations contemplated by this Settlement Agreement have
16 been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will
17 confer in good faith to resolve the dispute without the necessity of Court intervention. The
18 Settlement Administrator shall also be responsible for issuing to Plaintiff, Settlement Class
19 Members, and Class Counsel any W-2, 1099, or other Tax Forms as may be required by law for
20 all amounts paid pursuant to this Agreement. The Settlement Administrator shall also be
21 responsible for setting up all necessary tax accounts and forwarding all payroll taxes and
22 penalties to the appropriate government authorities.

23 64. Class Data. Within ten (10) days after entry of the Preliminary Approval Order,
24 Defendant shall provide the Class Data to the Settlement Administrator. The Settlement
25 Administrator will run a check of the Class Members' addresses against those on file with the
26 U.S. Postal Service's National Change of Address List. The Class Data provided to the
27 Settlement Administrator will remain confidential, shall be used solely to administer the
28 Settlement, and will not be used or disclosed to anyone, except as required by applicable tax

1 authorities, pursuant to Defendant's express written consent, or by order of the Court. Although
2 Class Counsel will not be provided with the list of Class Data, nothing herein shall prevent Class
3 Counsel from communicating with Class Member's regarding the Action and Settlement.

4 65. Notice. The Notice, as approved by the Court, shall be sent by the Settlement
5 Administrator to the Settlement Class Members, by first class mail, in English, within ten (10)
6 calendar days following the Settlement Administrator's receipt of the Class Data. The
7 Settlement Administrator shall use standard devices, including a skip trace, to obtain forwarding
8 addresses of Settlement Class Members if any envelopes are returned.

9 66. Returned Notices. The Settlement Administrator will take steps to ensure that the
10 Notice is received by all Settlement Class Members, including utilization of the National Change
11 of Address Database maintained by the United States Postal Service to review the accuracy of
12 and, if possible, update a mailing address. Notices will be re-mailed to any Class Member for
13 whom an updated address is located within ten (10) calendar days following both the Settlement
14 Administrator learning of the failed mailing and its receipt of the updated address. The Notice
15 shall be identical to the original Notice, except that it shall notify the Class Member that the
16 exclusion (opt-out) request or objection must be returned by the later of the Notice Response
17 Deadline or fifteen (15) days after the remailing of the Notice.

18 67. Disputes Regarding Information on Notices. Class Members are deemed to
19 participate in the Settlement, unless they opt-out. The Notice will inform Class Members of
20 his/her estimated Individual Settlement Payment and the number of Weeks Worked during the
21 Class Period. Class Members may dispute their Weeks Worked if they feel they should be
22 credited with more Work Weeks than Defendant's records show by timely submitting evidence
23 to the Settlement Administrator. Defendant's records will be presumed determinative absent
24 reliable evidence to rebut Defendant's records, but the Settlement Administrator will evaluate the
25 evidence submitted by the Class Member and provide the evidence submitted to Class Counsel
26 and Defense Counsel who agree to meet and confer in good faith about the evidence to determine
27 the Class Member's actual number of Work Weeks and estimated Individual Settlement
28 Payment. If Class Counsel and Defense Counsel are unable to agree, they agree to submit the

1 dispute to the Settlement Administrator to render a final decision. Class Members will have until
2 the Notice Response Deadline to dispute Weeks Worked, object or opt out, unless extended by
3 the Court. In the event that the Settlement Administrator increases the number of Weeks
4 Worked for any Settlement Class Member, then the Settlement Administrator will recalculate the
5 Individual Settlement Payments; accordingly, in no event will Defendant be required to increase
6 the Maximum Settlement Amount.

7 68. Declaration of Due Diligence. The Settlement Administrator shall provide
8 counsel for the Parties, at least twenty-five (25) calendar days prior to the final approval hearing,
9 a declaration of due diligence and proof of mailing with regard to the mailing of the Notice.

10 69. Settlement Class Members' Rights. Each Settlement Class Member will be fully
11 advised of the Settlement, the ability to object to the settlement, and the ability to opt-out or
12 request exclusion from the Settlement. All Parties, signatories and their counsel shall not
13 encourage opt-outs or objections to this Agreement. The Parties specifically agree not to solicit
14 opt-outs, directly or indirectly, through any means. The Notice will inform the Settlement Class
15 Members of the Court-established deadlines for filing objections or requesting exclusion from
16 the Settlement in accordance with the following guidelines:

17 (a) Requests for Exclusion from Settlement Class. Any Settlement Class
18 Member, other than Plaintiff, may request to be excluded from the Settlement Class by
19 submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on or before
20 the Notice Response Deadline. The Request for Exclusion should state:

21 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT
22 CLASS IN THE HARPER v. HAMNER TOWING LAWSUIT. I
23 UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM
24 THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY
25 MONEY FROM THE SETTLEMENT OF THIS LAWSUIT."

26 To be valid, any Request for Exclusion must include the full name, address, telephone
27 number, last four digits of the social security number or date of birth, and signature of the
28 Settlement Class Member requesting exclusion. The Request for Exclusion must be returned by

1 mail to the Settlement Administrator at the specified address. Any such Request must be made
2 in accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only
3 if postmarked by the Notice Response Deadline, unless the Parties otherwise agree in writing.
4 Any Settlement Class Member who timely requests exclusion in compliance with these
5 requirements: (i) will not have any rights under this Agreement, including the right to object,
6 appeal or comment on the Settlement; (ii) will not be entitled to receive any payments under this
7 Agreement; and (iii) will not be bound by this Agreement, or the Judgment. Any Aggrieved
8 Employee who requests timely exclusion will still be subject to the PAGA Released Claims to
9 the fullest extent permitted by law and receive a share of PAGA Penalties.

10 The parties agree that if more than ten percent (10%) of the Class Members opt out of the
11 Class Settlement by submitting valid and timely Requests for Exclusion as set forth in this
12 Agreement, Defendant shall have the right in its sole discretion to rescind and void this
13 Settlement Agreement within Fourteen (14) calendar days from the day the Settlement
14 Administrator furnishes the parties with the number of valid and timely Requests for Exclusion.
15 If Defendant exercises this option, Defendant shall pay all Settlement Administration Expenses
16 incurred up to that date.

17 (b) Binding Effect on Final Settlement Class Members. Except for those
18 Settlement Class Members who exclude themselves in compliance with the procedures set forth
19 above, all Settlement Class Members will: (i) be deemed to be Participating Class Members for
20 all purposes under this Agreement; (ii) will be bound by the terms and conditions of this
21 Agreement, the Judgment, and the releases set forth herein; and (iii) except as otherwise
22 provided herein, will be deemed to have waived all objections and oppositions to the fairness,
23 reasonableness, and adequacy of the Settlement.

24 (c) Objections to Settlement. Any Settlement Class Member, other than
25 Plaintiff, may object to the terms of this Agreement. To object, a Settlement Class Member shall
26 inform the Settlement Administrator, in writing, of his or her objection which must be
27 postmarked by the Notice Response Deadline at the address set forth in the Notice. Such
28 objection shall include the objecting Settlement Class Member's full name, address, telephone

1 number, and dates of employment with Defendant, the case name and number, the basis for the
2 objection, including any legal support and each specific reason in support of the objection, as
3 well as any documentation or evidence in support thereof, and, if the Objecting Settlement Class
4 Member is represented by counsel, the name and address of his or her counsel. The Settlement
5 Administrator shall provide objections, if any, to Class Counsel and Defense Counsel within
6 three (3) calendar days of receipt, and the Settlement Administrator shall attach the same to its
7 declaration of due diligence and file with the Court prior to the Final Approval Hearing. Any
8 Participating Class Member who files an objection remains eligible to receive monetary
9 compensation from the Settlement. Plaintiff and Defendant shall not be responsible for any fees,
10 costs, or expenses incurred by any Class Member and/or his or her counsel related to any
11 objections to the Settlement. Submitting an objection does not preserve the right to appeal a
12 final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely
13 and properly intervening or filing a motion to vacate the judgment under Code of Civil
14 Procedure § 663.

15 (d) Failure to Object. Any Settlement Class Member who desires to object
16 but fails to timely submit a written objection or in person objection at the Final Approval
17 Hearing waives any right to object and will be foreclosed from making any objection to this
18 Settlement. Any Settlement Class Member who does not timely and properly become a party of
19 record by intervening or filing a motion to vacate the judgment waives any and all rights to
20 appeal from the Judgment, including all rights to any post-judgment proceeding and appellate
21 proceeding, such as a motion to vacate judgment, motion for new trial, a motion under California
22 Code of Civil Procedure section 473, and extraordinary writs.

23 (e) Responses to Objections. Counsel for the Parties may file a response to
24 any objections submitted by objecting Settlement Class Members at least five (5) court days
25 before the date of the Final Approval Hearing.

26 (f) Settlement Class Members will have until the Notice Response Deadline
27 to object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The
28 Settlement Administrator shall disclose jointly to Class Counsel and Defendant's counsel what

1 objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the
2 request of Class Counsel or Defense Counsel.

3 (g) Defective Submissions. If a Settlement Class Member's Request for
4 Exclusion or objection is defective as to the requirements listed herein, that Settlement Class
5 Member will be given an opportunity to cure the defect(s). The Settlement Administrator will
6 mail the Settlement Class Member a cure letter within three (3) business days of receiving the
7 defective submission to advise the Settlement Class Member that his or her submission is
8 defective and that the defect must be cured to render the Request for Exclusion or objection
9 valid. The Settlement Class Member will have the later of (i) the Notice Response Deadline or
10 (ii) 15 calendar days from the date of the cure letter to postmark or fax a revised Request for
11 Exclusion or objection. If the revised Request for Exclusion or objection is not postmarked or
12 received by fax within that period, it will be deemed untimely.

13 70. Funding of the Settlement Amount. Defendant shall make a one-time deposit into
14 the QSF of the Maximum Settlement Amount (including the employers' share of the payroll
15 taxes) within fifteen (15) calendar days after the Effective Date. Once Defendant has complied
16 with its obligation set forth in this paragraph, it shall be deemed to have satisfied all of the terms
17 and conditions of this Agreement, shall be entitled to all the protections afforded it under the
18 Agreement, and shall have no further obligations under the Agreement, regardless of what occurs
19 with respect to the further administration of the Settlement. The Settlement Administrator (and
20 not Defendant) shall issue the applicable W-2s and IRS Form 1099 reflecting all payments to the
21 Class Members.

22 71. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
23 payment into the QSF, the Settlement Administrator will mail the Individual Settlement
24 Payments to the Participating Class Members and Aggrieved Employees, the payment to Class
25 Counsel for the Attorneys' Fees and Costs Award, any Service Payment to the Class
26 Representative, the payment to the LWDA for PAGA penalties, and will pay itself the Settlement
27 Administration Costs.

28 ///

1 72. Deadline for Cashing Settlement Checks. Participating Class Members and
2 Aggrieved Employees shall have 180 calendar days after mailing by the Settlement
3 Administrator to cash their settlement checks. If any Participating Class Member and/or
4 Aggrieved Employee's check is not cashed within that period, the check will be void and a stop-
5 payment will be issued, and the Settlement Administrator shall issue the unclaimed funds to the
6 California State Controller's Office in the name of the Class Member and/or Aggrieved
7 Employee. The release will be binding upon all Participating Class Members and Aggrieved
8 Employees who do not cash their checks within the 180-day period. In the event that any
9 settlement check is returned to the Settlement Administrator within 180 days of mailing, the
10 Settlement Administrator will, within five (5) business days of receipt of the returned settlement
11 check, perform a skip trace to locate the individual, and notify Defense Counsel and Class
12 Counsel of the results. If a new address is located by these means, the Administrator will have
13 ten (10) business days to re-issue the check. Neither Defendant, Defense Counsel, Class
14 Counsel, Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen
15 settlement checks, forged signatures on settlement checks, or unauthorized negotiation of
16 settlement checks. Without limiting the foregoing, in the event a Participating Class Member
17 and/or Aggrieved Employee notifies the Settlement Administrator that he or she believes that a
18 settlement check has been lost or stolen, the Settlement Administrator shall immediately stop
19 payment on such check. If the check in question has not been negotiated prior to the stop
20 payment order, the Settlement Administrator will issue a replacement check.

21 73. No person shall have any claim against Defendant (or their designees),
22 Defendant's Counsel, Plaintiff or Class Counsel based on mailings, distributions, payments or
23 reports made in accordance with or pursuant to this Agreement. This provision does not,
24 however, prevent a Party from seeking enforcement of this Agreement.

25 74. Without prejudice to any other remedies, the Settlement Administrator shall agree
26 to be responsible for any breach of its obligations (whether committed by the Settlement
27 Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless
28 from and against all liabilities, claims, causes of action, costs and expenses (including legal fees

and expenses) arising out of any breach committed by the Settlement Administrator or its agents.

H. Duties of the Parties Prior to the Court's Approval

75. Promptly after execution of this Settlement Agreement, Plaintiff will move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order accomplishing the following:

(a) Scheduling the Final Approval Hearing on the issue of whether this Settlement should be finally approved as fair, reasonable and adequate as to the Class Members and a hearing on fees, costs and the Service Payment;

(b) Approving as to form and content the proposed Notice;

(c) Directing the mailing of the Notice by first class mail to the Settlement Class Members;

(d) Preliminarily approving this Settlement; and

(e) Preliminarily certifying the class for purposes of this Settlement.

I. Duties of the Parties Following Court's Final Approval

76. In connection with the Final Approval Hearing provided for in this Settlement Agreement, Class Counsel shall submit a proposed Final Approval Order:

(a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;

(b) Approving Class Counsel's application for an award of attorneys' fees and reimbursement of litigation costs and expenses, the Service Payment to the Class Representative, and the payment to the Settlement Administrator for costs of administering the settlement; and

(c) Entering judgment approving settlement, thereby permanently barring all Settlement Class Members from prosecuting any Released Claims against any of the Released Parties.

77. Final Judgment. Class Counsel shall provide the Settlement Administrator with a copy of the Final Judgment once it is entered by the Court, and the Settlement Administrator shall post the Final Judgment to its website within three (3) business days of receipt.

///

1 **J. Voiding the Agreement**

2 78. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will
3 have no further obligations under the Settlement, including any obligation by Defendant to pay
4 the Maximum Settlement Amount, or any amounts that otherwise would have been owed under
5 this Settlement.

6 79. If the Settlement is voided or fails for any reason, any costs incurred by the
7 Settlement Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise
8 specified in this Agreement.

9 **K. Other Terms**

10 80. Waiver. The waiver by one Party of any breach of this Agreement by another
11 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

12 81. Parties' Authority. The signatories hereto represent that they are fully authorized
13 to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions
14 hereof.

15 82. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
16 accomplish the terms of this Settlement Agreement, including but not limited to, execution of
17 such documents and to take such other action as may reasonably be necessary to implement the
18 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their
19 best efforts, including all efforts contemplated by this Settlement Agreement and any other
20 efforts that may become necessary by order of the Court, or otherwise, to effectuate this
21 Settlement Agreement and the terms set forth herein. As soon as practicable after execution of
22 this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of
23 Defendant and Defendant's Counsel, take all necessary steps to secure the Court's preliminary
24 and final approval of the settlement, and the final entry of judgment. Class Counsel shall provide
25 Defendant's Counsel with copies of the Preliminary Approval Motion and Final Approval
26 Motion for review at least three business days prior to the filing deadline.

27 83. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
28 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,

1 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
2 cause of action or rights released and discharged by this Settlement Agreement.

3 84. No Admission. Defendant denies any and all liability to Plaintiff and/or any
4 Settlement Class Member in this Action, as to any and all causes of action that were asserted or
5 that might have been asserted in this Action. Nonetheless, Defendant wishes to settle and
6 compromise the matters at issue in the Complaint to avoid further substantial expense and the
7 inconvenience and distraction of protracted and burdensome litigation. Defendant has taken into
8 account the uncertainty and risks inherent in litigation, and without conceding any infirmity in
9 the defenses that it has asserted or could assert against Plaintiff, and has determined that it is
10 desirable and beneficial that Plaintiff's claims be settled in the manner and upon the terms and
11 conditions set forth in this Agreement.

12 85. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
13 Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be
14 construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part
15 of Defendant or any of the other Released Parties. Each of the Parties hereto has entered into
16 this Settlement Agreement with the intention of avoiding further disputes and litigation with the
17 attendant inconvenience and expenses. This Settlement Agreement is a settlement document,
18 and it, along with all related documents such as the notices, and motions for preliminary and
19 final approval, shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of
20 Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to
21 approve the settlement, and/or interpret or enforce this Settlement Agreement. The stipulation
22 for class certification as part of this Settlement Agreement is for settlement purposes only and if,
23 for any reason the settlement is not approved, the stipulation will be of no force or effect.

24 86. Notices. Unless otherwise specifically provided herein, all notices, demands or
25 other communications given hereunder shall be in writing and shall be deemed to have been duly
26 given as of the third business day after mailing by United States registered or certified mail,
27 return receipt requested, addressed:

28 ///

To the Settlement Class:

Brian Mankin
brian@LMLfirm.com
Kristina Bui Carlson
kristina@LMLfirm.com
Lauby, Mankin & Lauby LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

To Defendant:

Kevin M. Erwin, Esq.
JACKSON LEWIS P.C.
kevin.erwin@jacksonlewis.com
200 Spectrum Center Drive, #500
Irvine, CA 92618
T: 949-885-1360
F: 949-885-1380

87. Construction. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Settlement Agreement. Plaintiff and Defendant expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

88. Captions and Interpretations. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

89. Modification. This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement Agreement may not be discharged except by performance in accordance with its

1 terms or by a writing signed by all of the Parties hereto.

2 90. Choice of Law. This Settlement Agreement shall be governed by and construed,
3 enforced and administered in accordance with the laws of the State of California.

4 91. Integration Clause. This Settlement Agreement contains the entire agreement
5 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
6 or contemporaneous agreements, understandings, representations, and statements, whether oral
7 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
8 hereunder may be waived except in writing.

9 92. Binding On Assigns. This Settlement Agreement shall be binding upon and inure
10 to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
11 successors and assigns.

12 93. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
13 because the members of the Settlement Class are numerous, it is impossible or impractical to
14 have each Class member execute this Settlement Agreement. The Notice will advise all
15 Settlement Class Members of the binding nature of the release provided herein and such shall
16 have the same force and effect as if this Settlement Agreement were executed by each Settlement
17 Class Member.

18 94. Invalidity of Any Provision. Before declaring any provision of this Settlement
19 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest
20 extent possible consistent with applicable precedents so as to define all provisions of this
21 Settlement Agreement valid and enforceable.

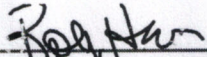
22 95. Counterparts. This Settlement Agreement may be executed in counterparts, and
23 when each Party has signed and delivered at least one such counterpart, each counterpart shall be
24 deemed an original, and, when taken together with other signed counterparts, shall constitute one
25 fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties.
26 Electronic signatures shall have the same force and effect as an original.

27 ///

28 ///

1 Dated: February 9, 2023

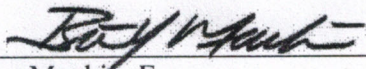
PLAINTIFF AND CLASS REPRESENTATIVE:

2 
Richard Harper (Feb 9, 2023 12:38 PST)

3 Richard Harper

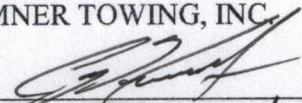
4 Dated: February 9, 2023

CLASS COUNSEL:
LAUBY, MANKIN & LAUBY LLP

6 
7 Brian Mankin, Esq.
8 Kristina Bui Carlson, Esq.
9 Attorneys for Plaintiff

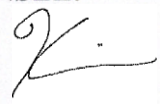
10 Dated: February 14, 2023

DEFENDANT:
HAMNER TOWING, INC.

11 
12 By: Casey Horvath
13 Title: VP

14 Dated: February 14, 2023

DEFENDANT'S COUNSEL:
JACKSON LEWIS P.C.

16 
17 Kevin Erwin, Esq.
18 Attorneys for Defendant

19 [END OF DOCUMENT]

20 4869-3857-6717, v. 1

EXHIBIT “2”

NOTICE OF SETTLEMENT OF CLASS AND REPRESENTATIVE ACTION

Richard Harper v. Hamner Towing, Inc., et al.

Superior Court of the State of California, County of San Bernardino, Case No. CIVSB2127523

To: All current and former nonexempt employees who were employed by Hamner Towing in California at any time between October 4, 2017, through March 9, 2023 (the “Class”):

THIS NOTICE is of a proposed settlement of the above-referenced class action and representative action lawsuit (the “Lawsuit”), and an announcement of a court hearing that you may choose to attend. Your rights may be affected by the legal proceedings in this Lawsuit. The Court will conduct a hearing on [REDACTED], 2023, to address whether the proposed settlement should be approved (the “Final Approval Hearing”). You may be entitled to receive a payment under the terms of this class action settlement contained in the Settlement Agreement.

[IDENTIFYING INFORMATION]

You have been identified as a Class Member and possible Aggrieved Employee in the above Lawsuit. Under the terms of the proposed settlement, you are estimated to receive approximately \$[INSERT AMOUNT] as your share of the Settlement should the Court grant the settlement in full. Please note that this is only an estimate. Your actual share may be more or less than this estimate. Your estimate is based on the number of eligible weeks that you worked for Hamner Towing in California between October 4, 2017, and March 9, 2023 (the “Class Period”). Your options and eligibility requirements for receiving payments are described below.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive your settlement payment from the Settlement Administrator if the Settlement receives Final Approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the released class and PAGA claims described in Section IV under the provisions titled “Release of Class Claims” and “Release of PAGA Claims.”
EXCLUDE YOURSELF	If you do not wish to participate in the settlement of the Class Claims, you may “opt-out” of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion by [REDACTED], 2023 (see Section V(B) for more details on how to opt-out). If you opt-out of the settlement of the Class Claims, you will no longer be a Class Member, and you will (1) neither receive any settlement payment for the Class Claims nor release any Class Claims as set forth in Section IV, and (2) be barred from filing an objection to the settlement. You still will receive a payment as part of the civil penalties paid pursuant to the California Private Attorneys General Act of 2004 (“PAGA”) and will release your claims for such civil penalties.
OBJECT	If you decide to object to the settlement with respect to the Class Claims because you find it unfair or unreasonable, you must submit an objection by [REDACTED], 2023 (see Section V(C) for more details on how to object).
DISPUTE YOUR NUMBER OF WORKWEEKS CREDITED	If you believe that the number of weeks that you are credited with working during the Class Period is incorrect, you may submit a written dispute to the Settlement Administrator (see Section IV for more details on how to dispute your credited Weeks Worked). Defendant’s records will be presumed correct, but you may provide evidence to the Settlement Administrator showing that your workweek calculation is inaccurate.

I. Why should I read this Notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in *Harper v. Hamner Towing, Inc., et al.* San Bernardino County Superior Court Case No. CIVSB2127523 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

Hamner Towing’s records show that you were employed as a nonexempt employee (meaning you were paid hourly or eligible for overtime pay) in California at some point between October 4, 2017, and March 9, 2023 (“Class Period”). The Court ordered this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you were employed by Hamner Towing as a nonexempt employee in California at any time during the Class Period, you are automatically included in the Settlement and do not need to take any further action to receive a payment.

The purpose of this Notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the proposed Settlement, and to discuss your rights and options in connection with the Lawsuit and the Settlement.

II. What is this lawsuit about?

On October 4, 2021, Plaintiff and Class Representative Richard Harper, through his attorneys (“Class Counsel”), filed a class action complaint against Hamner Towing for alleged wage and hour violations on behalf of all current and former nonexempt employees employed by Hamner Towing in California at any time since October 4, 2017. The Lawsuit alleges that Hamner Towing violated various Labor Code sections by failing to pay all required minimum and overtime wages, failing to provide meal periods and rest breaks, failing to reimburse business expenses, failing to timely pay final wages, and failing to provide accurate and complete wage statements during the Class Period. The Lawsuit also sought equitable relief under the Unfair Competition Law. All these claims are called the “Class Claims.” The Lawsuit also sought, on behalf of the California Labor Workforce Development Agency (“LWDA”), civil penalties pursuant to PAGA as a representative action. The civil penalty claims are called “PAGA Claims” and the relevant period for PAGA claims is October 4, 2020, through March 9, 2023 (“PAGA Period”).

Hamner Towing has denied, and continues to deny, the factual and legal allegations in the Lawsuit and believes that it has valid defenses to Plaintiff’s claims. By agreeing to settle, Hamner Towing is not admitting liability on any of the factual allegations or claims in the case or that the case can or should proceed as a class action and/or a representative action. Hamner Towing has agreed to settle the case as part of a compromise with Plaintiff and the Class Members.

The Court has not ruled on the merits of Plaintiff’s claims. And, by approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case if it went to trial. However, to avoid additional expense, inconvenience, and risks of continued litigation, Hamner Towing and Plaintiff have concluded that it is in their respective best interests and the interests of the Settlement Class to settle the Lawsuit on the terms summarized in this Notice. After providing extensive information to Class Counsel, the Settlement was reached following an arm’s length mediation with a respected and experienced mediator. In these negotiations, both sides recognized the substantial risk of the Court deciding against them at trial and determined that the Proposed Settlement was a good option to resolve the disputed claims.

The Class Representative and Class Counsel support this Settlement. Among the reasons for their support are the defenses to liability potentially available to Hamner Towing, the risk of denial of class certification or representative status, the inherent risk of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed by Hamner Towing, this Settlement will not affect your employment. California law strictly prohibits unlawful retaliation. Further, Hamner Towing will not take any adverse action against or otherwise target, retaliate, or discriminate against any Class Member because of the Class Member’s participation or decision not to participate in this Settlement. If a Class Member does not participate as to the Class Claims, his/her share of the settlement of the Class Claims will be paid to those who do participate.

III. Who are the attorneys representing The Parties?

Attorneys for Plaintiff and Class Members:	Attorneys for Hamner Towing:
Brian Mankin <i>brian@LMLfirm.com</i> Kristina Bui Carlson <i>kristina@LMLfirm.com</i> Lauby Mankin Lauby LLP 5198 Arlington Avenue, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444	Kevin M. Erwin <i>kevin.erwin@jacksonlewis.com</i> Jackson Lewis P.C. 200 Spectrum Center Drive, #500 Irvine, CA 92618 Tel: (949) 885-1360

IV. What are the terms of the Settlement?

On [PA DATE], the Court certified a class, for settlement purposes only, of all current and former nonexempt employees employed by Hamner Towing in California at any time from October 4, 2017, through March 9, 2023 (the “Settlement Class” or “Class Members”) and approved a representative class comprised of all current and former nonexempt employees employed by Hamner Towing in California at any time from October 4, 2020, through March 9, 2023 (“Aggrieved Employees”). Individuals who do not opt out of the Settlement Class, pursuant to the procedures set forth in this Notice, will become “Participating Class Members” and will be mailed Settlement checks, and in exchange will be bound by the Settlement and release of certain wage and penalty claims against Defendants.

Without admitting any wrongdoing, Hamner Towing has agreed to pay \$290,000 (the “Gross Settlement Amount”) to fully resolve all claims in the Lawsuit. The Parties agreed to the following payments from the Gross Settlement Amount:

Settlement Administration Costs. The Court has approved XX to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. Under the Settlement, a maximum of \$XX will be paid from the Gross Settlement Amount to pay the Settlement Administration Costs.

Settlement Administrator
Name
Address
Telephone

Penalties to the California Labor Workforce and Development Agency. The Labor Code Private Attorneys General Act (“PAGA”) authorizes employees to file lawsuits to attempt to recover civil penalties on behalf of other Aggrieved Employees and the State of California for alleged Labor Code violations. Under the Settlement, \$30,000 of the Gross Settlement Amount will be allocated to Plaintiff’s PAGA Claims. Of this amount, \$22,500 will be paid to the California Labor Workforce and Development Agency (“LWDA”) in satisfaction of the claims for civil penalties under PAGA, and the remaining \$7,500 will be divided between all Aggrieved Employees based on the number of weeks worked during the PAGA Period. Aggrieved Employees includes “all current and former nonexempt employees employed by Hamner Towing in California at any time during the PAGA Period.” You do not have the right to opt-out or exclude yourself from receiving the civil penalties paid to pursuant to PAGA. Review the information below to determine if you are an Aggrieved Employee and eligible to receive a share of the \$7,500 allocation:

Do you Qualify as an Aggrieved Employee?	Weeks Worked as an Aggrieved Employee	Your Share of PAGA Penalties
YES/NO	INSERT	\$INSERT

Service Payment to Class Representative. Class Counsel will ask the Court to award the Class Representative a Service Payment in the amount of \$5,000 to compensate his for service and extra work provided on behalf of the Class Members and in exchange for a general release of claims. The Class Representative also will receive his individual share of the Settlement as a Class Member.

Attorneys’ Fees and Costs. Class Counsel have been prosecuting the Lawsuit on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Gross Settlement Amount. Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or costs. Class Counsel will ask for fees of one-third (\$96,666.67) of the common fund Gross Settlement Amount as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through finalization of the Settlement. Class Counsel also will ask for reimbursement of up to \$20,000 for the costs Class Counsel incurred in connection with the Lawsuit.

Calculation of Individual Settlement Payments to Class Members. After deducting the amounts above from the Gross Settlement Amount, the balance will form the Net Settlement Amount for distribution to Participating Class Members (who are Class Members who do not opt-out). The Net Settlement Amount will total approximately \$. Individual Settlement Payments to Class Members will be calculated and apportioned from the Net Settlement Amount based on the number of calendar weeks during which a Settlement Class Member was employed by Hamner Towing in California and worked at least one shift (the “Weeks Worked”). Specific calculations of Individual Settlement Payments will be made as

follows: the Settlement Administrator will divide the total Weeks Worked by all Settlement Class Members into the Net Settlement Amount to determine a per “Workweek Value.” The Workweek Value will be multiplied by the number Weeks Worked by each Settlement Class Member during the Class Period to determine the “Individual Settlement Payment,” prior to legal deductions/withholdings, for each Settlement Class Member. If any Settlement Class Member opts-out of the Settlement, his/her Individual Settlement Payment will be distributed to all Participating Class Members (i.e., those who do not opt-out). Review the information below to determine your share as a Class Member:

Workweeks Worked as a Class Member During the Class Period	Your Share of the Net Settlement Amount
INSERT	INSERT

Disputes to Workweeks Credited. For each Settlement Class Member, the Weeks Worked during the Class Period will be calculated from Hamner Towing’s records. If you disagree with the numbers reported above, you may submit evidence to the Settlement Administrator on or before [REDACTED], 2023, with documentation to establish the number of Weeks Worked you claim to have actually worked for Hamner Towing in California between October 4, 2017, and March 9, 2023. **DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The Parties and Administrator will evaluate the evidence submitted by the Settlement Class member and discuss in good faith how many Weeks Worked should be credited to each Settlement Class member.

Payments to Class Members. After the Court grants Final Approval of the Settlement and judgment is entered, settlement checks will be mailed to Participating Class Members. For Aggrieved Employees who requested to be excluded from the Class Claims settlement, their settlement checks will only be for their share of PAGA civil penalties for release of their PAGA Claims. Participating Class Members and Aggrieved Employees will have 180 days from the issuance of the last check to cash all of the checks. In the event that any Participating Class Member or Aggrieved Employee fails to timely cash a settlement check, a stop payment will be placed on the check and the funds will be paid to the California State Controller’s Office in the name of the Participating Class Member or Aggrieved Employee, so that the Participating Class Member or Aggrieved Employee can attempt to collect the funds at a later date through the California State Controller’s Office.

Allocation and Taxes. Twenty-five percent (25%) of the Individual Settlement Payment distributed to each Participating Class Member will be considered and reported as wages (Form W-2 reporting). The remaining seventy-five percent (75%) will be considered and reported as interest and penalties (Form 1099 reporting). The Settlement Administrator shall take all usual and customary deductions from the Individual Settlement Payments that are distributed as wages, including, but not limited to, state and federal tax withholding, disability premiums, and unemployment insurance premiums. There will be no deduction taken from the interest and penalty distribution; however, the payments will be reported on IRS Form 1099 as income. Payments for PAGA Claims shall be paid one hundred percent (100%) as civil penalties for which no taxes shall be withheld and for which payment will be reported on IRS Form 1099. Participating Class Members and Aggrieved Employees are responsible for the proper income tax treatment of the Individual Settlement Payments and their payments for PAGA Claims. The Settlement Administrator, Defendants and their counsel, and Class Counsel cannot provide tax advice and make no representations as to the tax treatment or legal effect of the Individual Settlement Payments or payments for PAGA Claims. Participating Class Members and Aggrieved Employees will be solely responsible for the payment of any taxes and penalties assessed on their Individual Settlement Payments or payments for PAGA Claims. Accordingly, Participating Class Members and Aggrieved Employees should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release of Class Claims. Upon the final approval of the Settlement by the Court and Defendants’ funding of the Gross Settlement Amount, Plaintiff and all Class Members who do not submit a valid opt-out/request for exclusion will fully release and discharge Defendants and their past and present officers, directors, members, partners, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective parent corporations, subsidiaries, divisions, affiliates, attorneys, predecessors, successors and assigns (the “Released Parties”) from all claims stated in the Complaint and those based solely upon the facts in the Complaint, including: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to reimburse business expenses, (f) failure to timely pay wages upon separation of employment, (g) failure to provide accurate itemized wage statements, (h) unfair and unlawful competition, and (i) all other claims that reasonably could have arisen out of the allegations made and based on the facts alleged in the Complaint. These released claims and damages are hereinafter referred to as “Released Class Claims.” The time period governing these Released Class Claims shall be at any time from October 4, 2017, through March 9, 2023 (“Class Period”).

Release of PAGA Claims. Also upon the Court’s final approval of the Settlement and Defendants’ funding of the Gross Settlement Amount, Plaintiff—in his individual capacity and on behalf of the State of California and the LWDA—and all Aggrieved Employees shall completely release and discharge the Released Parties of PAGA claims that Plaintiff alleged against the Released Parties, on behalf of the Aggrieved Employees and the State of California, based on the facts stated in the Complaint and in the relevant LWDA notice letter, including all PAGA claims seeking civil penalties premised upon: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) reimburse business expenses, (f) failure to timely pay wages each period, (g) failure to timely pay wages upon separation of employment, (h) failure to provide accurate itemized wage statements, and (i) all other claims for civil penalties recoverable under PAGA based on the facts or claims alleged in the Complaint. These released claims and damages are hereinafter referred to as “Released PAGA Claims.” The time period governing the PAGA Released Claims shall be any time from March 21, 2020, through January 9, 2023 (“PAGA Period”).

Waiver of Labor Code Sections 206.5(e) and 2804. Participating Class Members will be deemed to have acknowledged and agreed that their claims for wages and/or penalties and/or unreimbursed expenses in the Lawsuit are disputed, and that the Individual Settlement Payments constitute payment of all sums allegedly due to them. Participating Class Members will be deemed to have acknowledged and agreed that California Labor Code Sections 206.5 and 2804 are not applicable to the Individual Settlement Payments. Section 206.5 of the Labor Code provides in pertinent part as follows:

“No employer shall require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made.”

Conditions of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

V. What options do I have?

- A. Do Nothing and Participate in the Settlement.** Under the Settlement, you will automatically receive a Settlement Payment unless you exclude yourself from the settlement by following the exclusion procedure set forth below. If you disagree with the number of Work Weeks credited, as described in this Notice, you may dispute the allocation of the Settlement without excluding yourself or objecting, as described below.
- B. Exclude Yourself from the Class Claims in the Settlement.** If you do not wish to take part in the release of the Class Claims in the Settlement, you may exclude yourself by sending to the Settlement Administrator a “Request for Exclusion from the Class Claims in the Class Action Settlement” letter/card postmarked no later than [REDACTED], 2023 with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE HAMNER TOWING LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT.”

Send the Request for Exclusion directly to the Settlement Administrator, [ADDRESS], postmarked no later than [REDACTED], 2023. Any person who files a timely Request for Exclusion from the Class Action Settlement, upon receipt: (1) will not have any rights under this Settlement with respect to the Class Claims, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive any money for the Class Claims under this Settlement; and (3) will not be bound by this Settlement, or the Judgment, with respect to the Class Claims. You still will be bound by this Settlement with respect to the release of the PAGA Claims.

- C. Object to Settlement.** You also have the right to object to the terms of the Settlement with respect to the Class Claims if you believe they are unfair or unreasonable. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Class Claims portion of the Settlement, you must submit a written objection stating your full name, your address, your telephone number, the last four digits of your social security number or your date of birth, your dates of employment with Hamner Towing, the case name and number, the name and address of your attorney(s) if you are represented, your signature, and each specific reason in support of your objection. You must also include any documentation or evidence in support of the objection, if any. Objections must be in writing and mailed to the Settlement Administrator, [ADDRESS], by no later than [REDACTED], 2023. Objections that do not include all required information, or that are not

submitted timely, may not be considered by the Court. You need not object to the Settlement if you only dispute the number of Weeks Worked. To dispute the number of Weeks Worked, please refer to the directions provided under the provision entitled “Calculation of Individual Settlement Payments to Class Members” in Section IV of this Notice.

If you choose to object to the Class Claims portion of the Settlement, you may also appear at the Final Approval Hearing scheduled for [REDACTED], 2023, at 10:00 a.m. in Department S26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415. You have the right to appear either in person or through your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement must file a notice of appearance with the Court and serve counsel for all parties on or before [REDACTED], 2023. All objections or other correspondence must state the name and number of the case. If you wish to appear at the Final Approval hearing, please contact Class Counsel or the Settlement Administrator in advance of the scheduled hearing to ensure that the hearing has not been continued by the Court.

If you object to the Settlement, you will remain a Class Member, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Participating Class Members who do not object. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

- D. Dispute Work Weeks Credited.** As discussed in Section IV, you may dispute the number of Weeks Worked if you believe the number credited is inaccurate.

VI. What is the effect of the settlement?

Released Rights and Claims. The Settlement is intended to settle all claims against the Released Parties that were asserted or could have been asserted in the Lawsuit regarding the alleged violations of wage and hour laws. If you were employed by Hamner Towing in California at any time during the Class Period and do not elect to exclude yourself from the Settlement Class, you will be deemed to have entered into this Release and to have released the class claims in this Lawsuit, described above in Section IV under the provision titled “Release of Class Claims.” All Aggrieved Employees will be deemed to have entered into a release of the PAGA Claims, described above in Section IV under the provision titled “Release of PAGA Claims.” If the Settlement is not approved by the Court or does not become final for some other reason, the Lawsuit may continue, and the releases will not take effect.

VII. What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement, the Class Counsel’s request for attorneys’ fees and reimbursement of documented litigation costs, and the Service Payment to the Class Representative on [REDACTED], 2023 at 10:00 a.m. in Department S26 of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415.

You are not required to attend the Final Approval Hearing, although any Class Member is welcome to attend the hearing.

VIII. How can I get additional information?

This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court’s files and the Class Action Settlement Agreement at the Office of the Clerk, San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415, during regular court hours. You may also contact the Settlement Administrator using the contact information listed above under Section IV for more information.

IX. Reminder as to time limits

Class Members do not have to take any further action to participate in the Settlement. The deadline for submitting a Request for Exclusion from the Class Claims is [REDACTED], 2023. The deadline for mailing an objection to the Settlement Administrator is [REDACTED], 2023.

These deadlines will be strictly enforced. To be considered timely, any Requests for Exclusion and objections to the Settlement must be postmarked by the above-stated deadlines. Any Requests for Exclusion and objections to the Settlement that are not postmarked on or before these deadlines will be deemed untimely and disregarded.

**PLEASE DO NOT CALL OR WRITE THE COURT
FOR INFORMATION ABOUT THIS SETTLEMENT**

EXHIBIT “3”



October 1, 2021

Submitted Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Hamner Towing, Inc.
2125 Railroad St.
Corona, CA 92880

Pamela Horvath
P.O. Box 489
Corona, CA 92878

Casey Horvath
P.O. Box 489
Corona, CA 92878

Jason Horvath
P.O. Box 489
Corona, CA 92878

Re: PAGA Civil Penalty Claim
Richard Harper v. Hamner Towing, Inc., et al.

To the Labor and Workforce Development Agency, Hamner Towing, Inc., Pamela Horvath, Casey Horvath, and Jason Horvath:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Richard Harper (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his former employer(s), Hamner Towing, Inc. and/or any affiliated entities, as well as its owners Pamela Horvath, Casey Horvath, Jason Horvath, and others (the “Owners”) (collectively, the “Company”), for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802 among possibly other sections inadvertently omitted, and/or sections of the applicable IWC Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company from approximately December 2019 through April 2021. Claimant alleges that, at all relevant times, he and all other non-exempt employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations that Claimant was subjected during his employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company's failure to accurately record and compensate for all hours worked. As one such example, Claimant and the Aggrieved Employees were frequently denied compliant meal periods. Yet, despite that Claimant and the Aggrieved Employees did not take meal periods, the Company automatically deducted 30 minutes of time from every shift without making any inquiry into whether a compliant meal period occurred. As a result, the Company failed to pay Claimant and the Aggrieved Employees for all hours worked, including minimum and overtime wages for all hours worked in excess of 8 and/or 12 per day and/or 40 per week.

Additionally, at all relevant times, Claimant was compensated on an hourly basis and was also was entitled to and did receive additional nondiscretionary compensation (such as bonuses and/or commissions). However, on the occasions when Claimant worked in excess of 8 and/or 12 hours per day and/or 40 hours per week and received additional earned compensation during the workweek, the Company failed to properly include these amounts in the calculations for Claimant's regular rate of pay. Therefore, the Company failed to pay proper overtime wages for the hours worked in excess of 8 and/or 12 per day and/or 40 per week.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company's policies and practices, as well as the hectic and demanding workload, Claimant was subjected to meal period violations when he was: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company (such as while driving), (3) forced to take a shortened meal period, (4) forced to take a meal period after the 5th hour of work, and (5) not provided mandated second or third meal periods for shifts in excess of 10 hours and 15 hours, respectively.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant's rest breaks and Claimant was often not authorized and/or permitted to take mandated rest breaks due to the lack of adequate staffing and coverage and being overwhelmed by the hectic workload. Furthermore, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break.

Moreover, at all relevant times, the Company required Claimant and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement. For example, Claimant was required to incur substantial expenses without reimbursement during employment, including: (1) paying for gasoline for customers (*i.e.*, for "gas calls"), and (2) acquiring and maintaining a smart phone and related monthly data plan to communicate with the Company via phone, text message, and e-mail.

The Company also failed to comply with the mandates of Labor Code §§ 204 and 210 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, as well as meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201–203 regarding timing of payment of final wages and failed to pay all wages due and owing upon separation of employment including minimum wages, overtime, and vacation wages. Finally, during his employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

Claimant alleges that he worked under the joint direction and control of Hamner Towing and the Owners and is informed and believes that each of them acted in all respects pertinent to this action as the



agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that Hamner Towing and the Owners acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, Hamner Towing and the Owners are an integrated enterprise and should be treated as a single employer because Hamner Towing and the Owners share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief, Hamner Towing and the Owners share common management, a centralized control of labor operations, and common ownership or financial control.

Furthermore, Claimant alleges that the Owners are now and at all relevant times were the owners of Hamner Towing and were Claimant's and the Aggrieved Employees' actual employer or, in the alternative, were individuals employed by the Company as managerial and/or supervisory employees and/or agents. In addition, Claimant alleges that at all relevant times the Owners had the authority, in the interest of Hamner Towing to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimant and the Aggrieved Employees, and were in Claimant's chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant's complaint herein. Claimant also alleges that Hamner Towing and the Owners are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting themselves in the manner described herein, Hamner Towing and the Owners were acting in active concert with on another such that the acts of each were fully attributable to the other in all material respects.

Claimant also alleges Hamner Towing and the Owners were merely the alter-ego of the others in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and each exercised undue dominance, control, influence, and management over the others. Claimant further alleges that, at all relevant times, Hamner Towing has been inadequately capitalized to conduct business, has failed to follow appropriate corporate formalities, and has simply been a shell and instrumentality through which the Owners have conducted their personal affairs. Adherence to the fiction of the separate existence of Hamner Towing would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice. Accordingly, the corporate veil should be pierced, and any liability attached to Hamner Towing should be imposed jointly and severally against the Owners.

Finally, in an additional separate, but not necessarily mutually exclusive, alternative theory of liability, the Owners are liable for PAGA civil penalties under Labor Code § 558 as "other person(s)" who caused the violations regarding minimum wage among other claims. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 ("if there is evidence and a finding that a party other than the employer 'violates, or causes to be violated' the overtime laws (§ 558(a)) or 'pays or causes to be paid to any employee' less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer"); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (same)

As a result of these violations, and others described below, Claimant alleges that he and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

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**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 210, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company's failure to accurately record and compensate for all hours worked and the failure to pay overtime and/or properly calculate the regular rate of pay for Claimant and other Aggrieved Employees. This resulted in earned, but unpaid, wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees performed work for the Company without receiving proper payment of the requisite minimum, overtime, and/or doubletime wages.

Accordingly, Labor Code §§ 210, 558, 1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that "[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ..." Labor Code § 512(a) states in pertinent part: "[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes."

Section 12 of applicable IWC Wage Order states in pertinent part: "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof."

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company's policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee's regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums and did not do so at the proper rate. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802; IWC Wage Order § 9(b))

Labor Code § 2802(a) states "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties."



IWC Wage Order § 9(b) states “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.”

Here, the Company required Claimant and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties without reimbursement. Accordingly, Labor Code § 2699 imposes a penalty upon the Company for each such violation of Labor Code § 2802

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 210, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

Here, the Company frequently paid wages beyond the timing requirements specified in Labor Code § 204 and, thus, violated the statute. Additionally, as a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code § 203.) Labor Code § 2699 also imposes a penalty.

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**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**
(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee's name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimants and all Aggrieved Employees due to violations including: failure to accurately state total hours worked (the wage statements failed to accurately reflect total compensable hours due to the failure to accurately record all hours worked); failure to accurately state gross wages earned; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state the applicable hourly rates; and failure to accurately state the corresponding number of hours worked at each hourly rate (including the failure to state the accurate overtime rate of pay). Accordingly, Labor Code §§ 226.3 and 2699 also impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199
(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES
(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimants seek the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimants is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees. Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

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CONCLUSION

Based on the foregoing, the Company may be liable for civil penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, he reserves the right to add new claims by supplementing this notice letter. Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,



By: Peter J. Carlson, Esq.

E-mail: peter@lmfirm.com



EXHIBIT “4”



CASE ASSUMPTIONS

Class Members	150
Opt Out Rate	1%
Opt Outs Received	1
Total Class Claimants	149
Subtotal Admin Only	\$7,154.52

Flat Fee Total \$6,500.00

For 150 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

November 23, 2022

Case: Harper v. Hamner Towing, Opt-Out Administration

Phoenix Contact: Michael E. Moore
Contact Number: 949.331.0131
Email: mike@phoenixclassaction.com

Requesting Attorney: Brian J. Mankin
Firm: Lauby, Mankin & Lauby, LLP
Contact Number: (951) 320-1444
Email: brian@lmlfirm.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on **150** Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	1		\$100.00
Toll Free Setup*	\$150.00	1		\$150.00
Call Center & Long Distance	\$2.00	20		\$40.00
NCOA (USPS)	\$37.50	1		\$37.50
Total				\$527.50

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Reminder Postcard / Website

Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	2		\$200.00
Data Merge & Duplication Scrub	\$0.10	150		\$15.00
Notice Packet & Opt-Out Form	\$1.35	150		\$202.50
Estimated Postage (up to 2 oz.)*	\$0.61	150		\$91.50
Check Cashing Reminder Postcard Postage Included	\$0.60	31		\$18.77
Total				\$527.77

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	4		\$220.00
Skip Tracing Undeliverables	\$0.85	38		\$31.88
Remail Notice Packets	\$0.75	35		\$25.88
Estimated Postage	\$0.61	35		\$21.05
Programming Undeliverables	\$50.00	1		\$50.00
Total				\$348.80

Database Programming / Processing Opt-Outs, Deficiencies or Disputes				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Claims Database	\$150.00	2		\$300.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	3		\$165.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	7		\$70.00
Case Manager	\$85.00	3		\$255.00
Total				\$990.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	1		\$135.00
Disbursement Review	\$135.00	1		\$135.00
Programming Manager	\$95.00	2		\$190.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	4		\$540.00
Mail Class Checks *	\$1.10	149		\$163.90
Estimated Postage	\$0.61	149		\$90.89
Total				\$1,389.79

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations				
Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Supervisor	\$115.00	3		\$345.00
Remail Checks & Tax Forms (Postage Included)	\$1.70	30		\$50.66
Case Associate	\$55.00	4		\$220.00
Reconcile Uncashed Checks	\$85.00	5		\$425.00
Conclusion Reports	\$115.00	3		\$345.00
Case Manager Conclusion	\$85.00	4		\$340.00
Final Reporting & Declarations	\$115.00	3		\$345.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	\$1,000.00	1		\$1,000.00
Check to Cy-Pres	\$150.00	1		Included
Uncashed Checks to the State of California Controllers Office	\$300.00	1		\$300.00
Estimated <u>19</u> Total Class Members				
Total				\$3,370.66

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$7,154.52



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA 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 Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT “5”