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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.: CIVSB2127523
*[Assigned to Hon. Judge David Cohn, Dept
S26, for all purposes]*

**DECLARATION OF BRIAN J. MANKIN,
ESQ., IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing
Date: July 13, 2023
Time: 9:00 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 law department and am a partner with the law firm of Lauby Mankin Lauby LLP, which has offices in Orange County and Riverside County. 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 Final Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

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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 well over 500 employee vs. employer litigation matters during my
7 22 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 well over 250 class action and
10 representative action wage/hour cases, and have been appointed by the court as class counsel and
11 have received final court approval and judgment in over half of those actions to date, and
12 anticipate 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). My team and I once held the record for the largest known PAGA-only
17 case in California’s history, which followed extensive litigation, summary adjudication and writs
18 to the CA Supreme Court against a Fortune 50 company (Garcia v. Macy’s, San Bernardino
19 Superior Court).

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

25 6. I was named by the LA Times as one “Southern California Leading Lawyers” in
26 the May 2023 issue of Consumer Attorney’s of Southern California (a recognition given to 17
27 employment/labor law attorneys in 2023). Additionally, over the last five consecutive years, I
28 have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that

only 5% of lawyers receive.

ADEQUACY OF THE SETTLEMENT

7. The Class, as conditionally certified by this Court, consists of 155 current and former non-exempt employees employed by Defendant in California at any time during the Class Period of October 4, 2017, through March 9, 2023 (the “Class Members”).

8. As set forth in the Declaration of the Settlement Administrator, the Net Settlement Amount is approximately \$140,523.00, after the deductions set forth in the chart below:

	Total Amount
<i>Gross Settlement Amount</i>	\$ 290,000.00
Attorneys’ Fees (1/3)	\$ 96,666.67
Litigation Costs	\$ 11,310.33
Administrator Costs	\$ 6,500.00
PAGA Penalties	\$ 30,000.00
Class Representative’s Service Award	\$ 5,000.00
<i>Net Settlement Amount</i>	\$ 140,523.00

9. The process of mailing the Class Notice was very successful, as 99.35% of the Notices were deemed deliverable by the Settlement Administrator.

10. The response from the Class Members was overwhelmingly positive, as no Class Members objected to the Settlement and only one person opted-out.

11. As discussed at length in Plaintiff’s motion for preliminary approval, as well as in the Motion for Final Approval, this Settlement is very favorable to the Class with an average payment of \$912.49 per Class Member based on a payment of \$14.38 per week worked, and the release is narrowly limited to the claims alleged.

12. Sufficient information existed to allow Class Counsel to intelligently value this case. Given the parties’ arms’ length bargaining facilitated by a reputable and experienced wage and hour mediator, the exchange of informal discovery, the experience of Class Counsel, the fact that 99.35% of the Class elected to participate and no objections were submitted, the presumption of fairness is justified.

13. I believe that the Settlement is fair, reasonable and adequate, and in the best interests of the Class, given the litigation risks and delay inherent in further litigation and

possible appeals. As set forth in Plaintiff's motion for preliminary approval and the declarations submitted in support thereof, Defendant contested Plaintiff's claims, and Plaintiff faced real challenges moving forward and obtaining a recovery in this matter. Nonetheless, the Parties concluded that further litigation would be protracted and expensive, and that it is desirable that the action be fully and finally settled in the manner and upon the terms and conditions set forth in the Settlement Agreement in order to limit further expense, inconvenience and distraction, to dispose of burdensome and protracted litigation, and to permit the operation of Defendant's business without further expensive litigation and the distraction and diversion of its personnel with respect to matters at issue. All parties took into account the uncertainty of risks inherent in any litigation, especially in complex cases such as this case. The Parties determined that it is desirable and beneficial to both the Class and Defendant that this case be settled. Risks on both sides were considered in reaching the Settlement Agreement. The recoveries contemplated by the Settlement represent a good result for the Class, fairly proportioned to the likely risk-adjusted recovery in litigation.

ADEQUACY OF COUNSEL AND

REASONABLENESS OF REQUESTED FEE AND COST AWARDS

14. As set forth above, I have handled well over 250 class and representative actions, have been appointed as class counsel and have successfully resolved approximately half of those actions, and many others remain pending and will successfully resolve in the future while recovering in excess of \$250 million dollars for my clients and Class Members. This is substantially better than average accordingly to Mayer Brown LLP's study entitled, An Empirical Analysis of Class Actions, cited in *Laguna v. Coverall North America, Inc.* (9th Cir. 2014) 753 F.3d 918, which found that only one-third of class actions are successful, compared to two-thirds that are defeated and result in no payment to the class members.¹

15. When this case was taken on a contingency fee basis, with my firm agreeing to assume responsibility for all litigation costs, the ultimate result was far from certain. In the course of this litigation, Class Counsel paid all costs including filing fees, court costs, research

¹ www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf

1 fees, and mediation costs. There was never a guarantee that we would recoup those expenditures.

2 16. It has been my experience that the benchmark for attorney fee awards in
3 California state cases is one-third of a common settlement fund, which the CA Supreme Court
4 upheld in the *Robert Half* case. Here, in accordance with the Settlement Agreement, Class
5 Counsel is seeking a fee of \$96,666.67, which is one-third of the Settlement Amount.

6 17. There are several additional factors why I believe that the Court should award
7 one-third of the common fund as reasonable attorneys' fees. First, Class Counsel's efforts
8 resulted in a common fund settlement amount of \$290,000. This is a very good result in light of
9 the disputed nature of the claims alleged. This result was achieved by the work and success of
10 my office, who negotiated the settlement after extensive preparation, investigation, mediation,
11 and substantial work thereafter.

12 18. Second, Plaintiff faced significant risks going forward with the litigation. As
13 discussed in the motion for preliminary approval, Defendant raised various defenses throughout
14 this litigation, any one of which, if successful, could have decimated Plaintiff's case. And
15 Defendant vowed to raise all these defenses at trial. Accordingly, Plaintiff faced risky issues
16 going forward with this litigation, and it would have taken several more years to realize any
17 recovery in this action along with the possibility of post-trial appeals.

18 19. Third, Class Counsel are experienced class action litigators. This experience and
19 expertise, combined with the high quality of work performed in this case, resulted in the
20 settlement achieved in this case.

21 20. Fourth, Class Counsel have been representing Plaintiff in this matter strictly on a
22 contingency fee basis. To that end, we have incurred the risk of non-recovery after investing a
23 substantial amount of time, money, and resources, and have done so since the inception of this
24 case without any payment or compensation. If Plaintiff had lost this case, we would have
25 recovered nothing, and would have lost our out-of-pocket costs. This is not an easy burden for
26 my office, which is a small firm.

27 21. Fifth, the request for attorney's fees in the amount of one-third of the common
28 fund falls well within the norms accepted by state and federal courts in California in comparable

1 wage and hour actions actually handled by my office. Moreover, the award of a one-third fee
2 recovery under the common fund doctrine was recently approved by the California Supreme
3 Court in *Laffitte v. Robert Half*.

4 22. For all of the above reasons, a common fund fee award here in the amount of one-
5 third of the common fund created by Plaintiff and Class Counsel is fair and reasonable.

6 23. At my office, this case was primarily handled by Kristina Carlson, an associate
7 within our office, while I performed the role of the supervising attorney. As set forth in her
8 declaration, Ms. Carlson works exclusively with me on employment law matters and has been in
9 practice for 9 years. She bills at the hourly rate of \$550/hour. I have been in practice for 22
10 years, with most of those years handling complex litigation and for over the last 15 years, my
11 practice has almost entirely consisted of handling class action wage and hour matters. My billing
12 rate is \$775/hour. I believe these rates are consistent with Plaintiff and Defense attorneys who
13 handle complex class action litigation, if not somewhat lower.

14 24. The hourly rates above are comparable to those of other attorneys with equal or
15 similar experience, if not somewhat lower (i.e., the Laffey Matrix at www.laffeymatrix.com
16 indicates that the benchmark rate for an 8–10-year attorney to be \$676/hour and a 11-19 year
17 attorney at \$764/hour, and a 20+ year attorney at \$919/hour). Moreover, the Wolters Kluwer
18 Real Rate Report (“Real Rate Report”), provides directly applicable information in this regard.
19 The Real Rate Report is based on an enormous and statistically significant compilation of data.
20 For instance, in 2017, the report was based on 25.8 million billing entries and 23.9 million hours
21 billed by over 112,100 individual timekeepers from 4,620 law firms, totaling \$9.02 billion in fees
22 billed. The Real Rate Report then compiles and analyzes this data to provide the hourly rates for
23 partners and associates in major metropolitan areas. In 2018, for the southern California area,
24 which is based on billing entries for 999 partners and 1,361 associates, the Real Rate Report
25 states that: (a) the median rate for partners in Los Angeles is \$695 and the upper quartile is \$995
26 per hour, and (b) the median rate for associates in Los Angeles is \$550 and the upper quartile is
27 \$721 (2018 Kluwer Real Rate Report, page 21). And, perhaps most importantly, the information
28 provided in the Real Rate Report is not based on self-reported numbers, surveys, sampling, or

reviews or other publications – instead, the Real Rate Report is based on the actual hours and fees billed by law firms.

25. The table below includes a summary of the hours worked, plus an estimated 30 hours that I will bill in finalizing and filing the motion, preparing for and attending the approval hearing, and working with the claims administrator and defense counsel to finalize this matter. The total lodestar for my firm is approximately \$140,165 through the conclusion of this matter, as shown in the chart below:

Attorney/Timekeeper	Rate	Hours	Fee
Brian J. Mankin <i>Trial Counsel / Partner</i> (22 Years)	\$775	82²	\$63,550
Kristina Carlson <i>Associate</i> (9 Years)	\$550	139.3	\$76,615
Grand Total for All Attorneys			\$140,165

26. The fee is warranted because of the results achieved for the Class Members, both in terms of the immediate cash settlement, as well as the fact that the Class Members resoundingly supported the Settlement. Defendants do not oppose this fee request.

27. In the course of prosecuting this action, Class counsel have incurred expenses that were incidental and necessary to the effective representation of the Class. These expenses included but were not limited to: court filings, copying and management of documents, on-line Lexis research, messenger services, postage, fax transmission expenses, transportation, mediator fees including travel to mediation, and other incidental expenses directly related to this action. The Settlement Agreement provided up to \$20,000 in costs. Through final approval, my office incurred \$11,310.33 in litigation costs (see Exhibit “B” attached hereto). The saving will be placed in the Net Settlement Amount for payment to the Class Members. Defendant does not oppose this request for costs.

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² Includes an estimated 30 hours of additional work preparing for and attending the hearing, as well as anticipated work to be performed after the final approval hearing with counsel, administrator, employees, and the court.

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29. The Motion and declarations, including the Settlement Agreement, have concurrently been submitted to the LWDA. (See Exhibit “C”).

EXHIBITS AND CONCLUSION

31. Attached hereto as Exhibit “B” is a true and correct copy of an itemized statement of my firm’s litigation costs.

33. For the foregoing reasons, it is respectfully requested that the Court grant final approval of the settlement as being fair, reasonable, and in the best interest of the class, and approve the requested attorneys' fees, costs, and service award.

By: Brian J. Mankin
Brian J. Mankin, Esq.

EXHIBIT “A”

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Attorneys for Defendant HAMNER TOWING, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
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]*

**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 ADVISOR 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.

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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.

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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,

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

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

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

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

///

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.

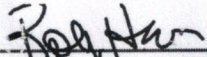
22 95. Counterparts. This Settlement Agreement may be executed in counterparts, and
23 when each Party has signed and delivered at least one such counterpart, each counterpart shall be
24 deemed an original, and, when taken together with other signed counterparts, shall constitute one
25 fully signed 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

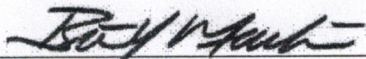
PLAINTIFF AND CLASS REPRESENTATIVE:

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

3 Richard Harper

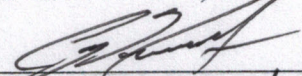
4 Dated: February 9, 2023

CLASS COUNSEL:
LAUBY, MANKIN & LAUBY LLP

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

9 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.
Attorneys for Defendant

18 [END OF DOCUMENT]

19 4869-3857-6717, v. 1

EXHIBIT “B”

All Expenses

Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00468 Harper v Hamner
Towing (Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
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Richard Harper
14000-00468 Harper v Hamner Towing

10-01-2021	Approved	Non-Billable	E101 Copying L.	Grossi, Tracie	0.06	0.00	140.00	8.40
140 copies @ \$.06 for letters to employer								
10-01-2021	Approved	Non-Billable	E112 Court fees Chiarito, Tracie		75.00	0.00	1.00	75.00
Receipt for LWDA - submit PACA letter								
11-04-2021	Approved	Non-Billable	E108 Postage	Aguilera, Monica A	33.44	0.00	1.00	33.44
Postage for the month of October 2021								
11-17-2021	Approved	Non-Billable	Attorney Service	Aguilera, Monica A	0.00	0.00	1.00	0.00
Bosco Inv 6354709 File and Conform Proof of Service of Summons for: Hamner Towing, Inc., a California Corporation Court: San Bernardino County Superior Court - Central District								
11-18-2021	Approved	Non-Billable	Attorney Service	Aguilera, Monica A	112.11	0.00	1.00	112.11
Bosco Inv 6337012 Serve: Hamner Towing, Inc., a California Corporation Summons; Complaint; Civil Case Cover Sheet; Certificate of Assignment; ADR Court: San Bernardino County Superior Court - Central District								
12-03-2021	Approved	Non-Billable	E112 Court fees	Aguilera, Monica A	1,466.00	0.00	1.00	1,466.00
San Bernardino Superior Court to file complaint								
12-15-2021	Approved	Non-Billable	Attorney Service	Aguilera, Monica A	113.95	0.00	1.00	113.95
Bosco Inv 6446195 Serve: Hammer Towing, Inc., a California Corporation Amended Summons; First Amended Class and Representative Complaint; ADR Court: San Bernardino County Superior Court - Central District								
12-20-2021	Approved	Non-Billable	Attorney Service	Aguilera, Monica A	0.00	0.00	1.00	29.95
Bosco Inv 6462899 File and Conform: Proof of Service Court: San Bernardino County Superior Court - Central District								
02-07-2022	Approved	Non-Billable	E112 Court fees	Aguilera, Monica A	36.00	0.00	1.00	36.00
San Bernardino Superior Court Receipt #SC-2021-69956 to fax file FAC								
02-08-2022	Approved	Non-Billable	E112 Court fees	Aguilera, Monica A	94.00	0.00	1.00	94.00
CourtCall ID #11447301 for 2-8-22 Case management conference								
06-10-2022	Approved	Non-Billable	Attorney Service	Chiarito, Tracie	94.00	0.00	1.00	94.00
Courtcall ID# 11533644 - Courtcall for 6/9/22 CMC								

All Expenses

Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00468 Harper v Hamner
Towing (Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
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Richard Harper
14000-00468 Harper v Hamner Towing

06-29-2022	Approved		Non-Billable	E125 Mediation fees	Chiarito, Tracie	6,475.00	0.00	1.00	6,475.00
JAMS Inv #6230630 for 10/11/22 Mediation w Judge Nancy Wieben Stock									
08-01-2022	Approved		Non-Billable	E101 Copying	Chiarito, Tracie	0.06	0.00	8.00	0.48
8 copies @ .06 for Ntc of Change of Address									
08-24-2022	Approved		Non-Billable	E112 Court fees	Chiarito, Tracie	26.00	0.00	1.00	26.00
Court fees to fax file slip to cont 9/1/22 case management conference									
10-25-2022	Approved		Non-Billable	E119 Experts	Chiarito, Tracie	1,937.50	0.00	1.00	1,937.50
Berger Consulting Inv #6964									
11-17-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	94.00	0.00	1.00	94.00
Courtcall ID #11620599 for 11/16/22 CMC									
02-15-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	195.50	0.00	1.00	195.50
Bosco Inv #8390062 File and conform. -Motion -Declaration x3 -Proposed Order *advance fees* Court: San Bernardino County Superior Court - Central District Completed on: 02/14/2023									
03-16-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	72.00	0.00	1.00	72.00
Courtcall ID #11672089 for 3/15/23 MPA									
03-23-2023	Approved		Non-Billable	E112 Court fees	Chiarito, Tracie	3.00	0.00	1.00	3.00
SBSC fees for copy of signed order on MPA									
06-20-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	300.00	0.00	1.00	300.00
Estimated costs to file Motion for Final Approval and supporting documents via Bosco									
07-13-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	144.00	0.00	1.00	144.00
Estimated costs for Courtcall for Motion for Final Approval									

Project Total 11,310.33
Client Total 11,310.33

All Expenses

Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00468 Harper v Hammer
Towing (Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
Grand Total									11,310.33

EXHIBIT “C”