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Attorneys for Plaintiff Juan Nieves and on behalf of the Proposed Class

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

JUAN NIEVES, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

KLLM TRANSPORT SERVICES, LLC, a
Texas Limited Liability Company; and
DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVSB2134796
*[Assigned to Hon. Judge David Cohn, Dept. S26,
for all purposes]*

**DECLARATION OF BRIAN MANKIN IN
SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL**

Hearing

Date: November 29, 2022
Time: 10:00 a.m.
Dept.: S26

Complaint filed: December 21, 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. Within our firm, I am a partner and manage the employment practice. I represent Plaintiff Juan Nieves 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.

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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 over 500 employee vs. employer litigation matters during my 21
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 approximately 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 2018, 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 major class and PAGA cases against Fortune 100 companies. In
22 2018, I was lead counsel in a PAGA case that my firm tried to the bench in the Orange County
23 Superior Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action
24 case against Walmart that we tried to the jury in District Court, wherein the jury awarded
25 Plaintiff over \$6 million. Both cases were appealed.

26 6. Over the last 4 to 5 years, I have been consecutively selected by my peers as a
27 “Super Lawyer” in Employment Litigation.

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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 not to exceed \$6,500, PAGA penalties of \$50,000 (of which \$37,500 or 75% will be paid to the LWDA and the remaining \$12,500 or 25% will be paid pro-rata to the Aggrieved Employees), and a Service Payment not to exceed \$5,000 for Plaintiff. After subtracting the agreed-upon deductions from the Gross Settlement Amount, it is estimated that \$275,166.67 will be available to the Class Members who do not opt-out of the settlement, as follows:

	Total Amount
<i>Gross Settlement Amount</i>	\$ 535,000.00
Attorneys' Fees (1/3)	\$ 178,333.33
Litigation Costs	\$ 20,000.00
Administrator Costs	\$ 6,500.00
PAGA Penalties	\$ 50,000.00
Class Representative's Service Award	\$ 5,000.00
<i>Net Settlement Amount</i>	\$ 275,166.67

1 8. Assuming 100 Class Members, the average payment to each class member will be
2 approximately \$2,751.67 (\$275,166.67 / 100). Of course, the actual payment will be calculated
3 on a pro-rata basis according to the number of Pay Periods Worked by each Class Member.

4 Assuming an estimated 9,500 Pay Periods worked, each Pay Period will have a value of
5 approximately \$28.96 on average. In addition, based on information from Defendant, there are
6 approximately 65 Aggrieved Employees (*i.e.*, individuals who worked during the PAGA Period
7 starting on December 21, 2020), will receive a pro rata share of the \$12,500 PAGA Penalties
8 (accounting for 25% of the total \$50,000 allocation). Moreover, the Aggrieved Employees
9 collectively worked approximately 3,500 Pay Periods during the PAGA Period.

10 9. Each Class Member will receive the Class Notice, explaining the nature of the
11 case, and the process for participating, objecting and opting-out, and advising of his/her estimated
12 settlement payment and the number of Pay Periods he/she is credited with working during the
13 Class and PAGA Periods (attached hereto as **Exhibit B**).

14 **PROCEDURAL BACKGROUND**

15 10. My office has performed considerable work and diligently investigated and
16 prosecuted this case to a successful conclusion. Our work has resulted in the creation of a
17 significant settlement fund for the benefit of the Class. We efficiently communicated and
18 exchanged information informally with Defense counsel which enabled the parties to
19 successfully settle the case at mediation. Because of the risks involved in litigating the case and
20 the contested legal and factual issues, I believe this settlement to be fair, reasonable, and
21 adequate.

22 11. After being retained by Plaintiff, we sent a December 17, 2021, letter to
23 Defendant requesting the production of her personnel file and timekeeping records in order to
24 further evaluate his wage and hour claims. That same day, we submitted a letter to the California
25 Labor Workforce Development Agency (the “LWDA”) for civil penalties under the Private
26 Attorney General Act of 2004 (the “PAGA”), which is attached hereto as **Exhibit C**.

27 12. On December 21, 2021, Plaintiff filed a class and representative PAGA action
28 complaint in the Court alleging claims for: (1) failure to pay minimum and regular wages, (2)

1 failure to provide meal periods, (3) failure to provide rest breaks, (4) failure to reimburse for
2 business expenses, (5) failure to timely pay final wages, (6) failure to provide accurate itemized
3 wage statements, (7) unfair and unlawful competition pursuant to Business and Professions Code
4 §17200 *et seq.*, and (8) related claims under PAGA.

5 13. Defendant retained counsel and, on March 11, 2022, Defendant removed the
6 Action to the United States District Court for the Central District of California. Plaintiff advised
7 of his intention to file a motion to remand, but the Parties stayed all motion practice pending the
8 completion of mediation and agreed that any settlement reached at mediation would include a
9 stipulation to remand the Action to state court. In preparation for the mediation, the Parties
10 informally exchanged documents and information that allowed both sides to calculate the
11 potential damages and evaluate potential risk, including policies and procedures pertaining to
12 each claim alleged, and statistics relating to the number of current and former employees,
13 number of shifts, pay periods worked and other things. In this regard, Defendant provided a
14 random 20% sampling of timekeeping and payroll records of the Class Members. This robust
15 sampling enabled both parties to take a deep dive into the claims. Additionally, during this
16 process, Plaintiff and his counsel analyzed, researched, and investigated the potential issues,
17 including matters related to the calculation of damages, trial, and appellate issues and risks.

18 14. The Parties mediated on May 6, 2022 with Honorable Jonathan Cannon, a retired
19 Judge who served in the Orange County Complex Civil Department and now serves as mediator
20 on wage and hour class action cases among other matters. At the conclusion of mediation, Judge
21 Cannon issued a mediator's proposal calling for a class-wide settlement for \$535,000. The
22 Parties accepted the mediator's proposal and memorialized the terms of the settlement in a long-
23 form Settlement Agreement. The Parties now seek the Court's preliminary approval of the
24 Settlement.

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

26 15. The settlement was the product of extensive arm's length negotiations, facilitated
27 by an experienced mediator. Though cordial and professional, the settlement negotiations were
28 adversarial and non-collusive in nature. The settlement reached is the product of substantial

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

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

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

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

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

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1 20. 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 PAYMENTS**

6 21. Plaintiff seeks an enhancement payment of \$5,000, which I believe is fair and
7 warranted given the time and effort he devoted to this case. As noted in the motion, he entered
8 into a separation agreement at the conclusion of mediation and had to locate new employment
9 (which was resolved through a separate confidential agreement that can be disclosed to the Court
10 upon request). Additionally, his efforts included providing factual background for the Class and
11 PAGA complaint; providing documents and information about Defendant's compensation plan;
12 participating in phone calls to discuss litigation and settlement strategy; making himself available
13 throughout the litigation to assist with analyzing the claims and defenses; helping Class Counsel
14 prepare for the mediation; and reviewing the settlement documents. The Class Representative
15 also assumed significant risk in bringing this litigation—namely, had he lost, he could have been
16 ordered to pay Defendant's costs.

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

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

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

26 24. It is my experience that attorney fee awards of one-third of a common fund
27 settlement is the standard in California. In this case, Plaintiff's counsel agreed to seek one-third
28 of the Settlement Amount for attorneys' fees. Defendant does not oppose this fee request. The

1 fee is further warranted because it is within the range of reasonableness typically awarded in
2 class actions. My firm's costs are reasonably capped at \$20,000 and will be based on the actual
3 amount of costs incurred at the time of final approval.

4 **SETTLEMENT ADMINISTRATOR**

5 25. The parties request that the Court appoint ILYM Group to serve as the Settlement
6 Administrator. ILYM is experienced in administering class action settlements, and has provided
7 a flat-fee proposal to administer this settlement for \$6,500.

8 **CONCLUSION**

9 26. Plaintiff has concurrently submitted the settlement to the LWDA in accordance
10 with Labor Code § 2699(1)(2). The proof of submission is attached hereto as **Exhibit D**.

11 27. For the foregoing reasons, it is respectfully requested that the Court grant
12 preliminary approval of the settlement as being fair, reasonable, and in the best interests of the
13 class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement
14 payment to the Class Representative.

15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct. Executed on August 18, 2022, at Riverside, California.

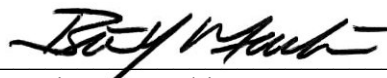
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18 By: 
19 Brian J. Mankin, Esq.
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EXHIBIT “A”

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Attorneys for Plaintiff Juan Nieves and all others similarly situated

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Attorneys for Defendant KLLM Transport Services, LLC

[Additional counsel on next page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

JUAN NIEVES, individually, on a
representative basis, and on behalf of all
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Plaintiff,

vs.

KLLM TRANSPORT SERVICES, LLC, a
Texas Limited Liability Company; and DOES
1 through 20, inclusive;

Defendants.

Case No.: CIVSB2134796
*[Assigned to Honorable David Cohn, Dept.
S26, for all purposes]*

**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE OF
CLAIMS**

Complaint filed: December 21, 2021

1 G. Clark Monroe II (pro hac vice forthcoming)

2 *gcmonroe@dunbarmonroe.com*

3 DUNBARMONROE, PLLC

4 270 Trace Colony Park Drive

5 Ridgeland, Mississippi 39157

6 Tel: (601) 898-2716 | Fax: (601) 898-2074

7 Attorneys for Defendant KLLM Transport Services, LLC

1 This Class Action Settlement Agreement and Release of Claims is entered into by and
2 between Plaintiff Juan Nieves, individually and on behalf of all others similarly situated, and
3 Defendant KLLM Transport Services, LLC, and is approved by their respective counsel of
4 record, subject to the terms and conditions hereof and the Court's approval.

5 **A. Definitions**

6 As used herein, for the purposes of this Settlement Agreement only, the following terms
7 shall be defined as set forth below:

8 1. "Action" or "Lawsuit" means and refers to the case entitled *Juan Nieves v. KLLM*
9 *Transport Services, LLC, et al.*, San Bernardino County Superior Court, Case No.
10 CIVSB2134796.

11 2. "Agreement" or "Settlement Agreement" shall mean this Class Action Settlement
12 Agreement and Release of Claims.

13 3. "Aggrieved Employees" means all current and former truck drivers who resided
14 in California and who were employed by Defendant at any time during the PAGA Period.

15 4. "Class Counsel" refers to Brian Mankin and Peter Carlson of Lauby Mankin
16 Lauby LLP.

17 5. "Class Data" means a complete list that Defendant will diligently and in good
18 faith compile from its records and provide to the Settlement Administrator on one spreadsheet
19 and shall include the Settlement Class Members' full names; last known addresses; Social
20 Security Numbers; the dates of employment and total Pay Periods Worked during the PAGA
21 Period for each Aggrieved Employee, and the total Pay Periods Worked during the Class Period
22 for each Settlement Class Member.

23 6. "Class Period" is deemed to be any time during the period of December 21, 2017,
24 through the Preliminary Approval Date or August 31, 2022, whichever is earlier.

25 7. "Class Representative" or "Plaintiff" means and refers to Juan Nieves.

26 8. "Complaint" refers to the operative complaint in the Action, alleging Class
27 Claims and representative PAGA Claims.

28 9. "Court" (or "Judge") means the California Superior Court, County of San

1 Bernardino.

2 10. “Defendant” means and refers to KLLM Transport Services, LLC.

3 11. “Defendant’s Counsel” or “Defense Counsel” means and refers to Green &
4 Roberts LLP and DunbarMonroe, PLLC.

5 12. “Effective Date”: The terms of settlement embodied in this Settlement shall
6 become effective when all of the following events have occurred: (i) this Settlement Agreement
7 has been executed by all Parties and their respective counsel; (ii) the Court has given preliminary
8 approval to the Settlement Agreement; (iii) the Notice has been given to the class, providing
9 them with an opportunity to dispute information contained in the Notice, to opt out of the
10 Settlement Agreement, or to object to the Settlement Agreement; (iv) the Court has held a final
11 approval hearing and entered a final order and judgment certifying the Class and approving this
12 Settlement; and (v) the later of the following events: (a) the date final approval is granted if there
13 are no objections to the settlement; (b) sixty-five (65) days following notice of entry of the
14 Court’s final order approving the Settlement Agreement if there are any objections by any Class
15 Member; or (c) if any appeal, writ or other appellate proceeding opposing this Settlement has
16 been filed within sixty-five (65) days following notice of entry of the Court’s final order
17 approving the Settlement, then twenty (20) days after when any appeal, writ or other appellate
18 proceeding opposing the Settlement Agreement has been resolved finally and conclusively with
19 no right to pursue further remedies or relief. In this regard, it is the intention of the Parties that
20 the Settlement Agreement shall not become effective until the Court’s order approving the
21 Settlement is completely final, and there is no further recourse by an appellant or objector who
22 seeks to contest the Settlement.

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

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

28 15. “Gross Settlement Amount” shall have the meaning ascribed to it in Paragraph

49(a) below.

16. “Individual Settlement Payment(s)” shall have the meaning ascribed to it in Paragraph 49(c) below.

17. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 49(b) below.

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

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

20. “Objecting Settlement Class Member” means a Settlement Class Member, other than Plaintiff, who submits a valid and timely objection to the terms of this Agreement with respect to the Released Class Claims, pursuant to Paragraph 72(c) below.

21. “PAGA Penalties” means the amount that the Parties have agreed to pay to the Labor and Workforce Development Agency (“LWDA”) in connection with the California Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”), as well as the individual PAGA payment allocated to each Aggrieved Employee, as set forth further below in Paragraph 49(h).

22. “PAGA Period” is deemed to be any time during the period of December 21, 2020, through the Preliminary Approval Date or August 31, 2022, whichever is earlier.

23. “PAGA Released Claims” or “PAGA Claims” by the Aggrieved Employees upon Final Approval of the Settlement means all PAGA claims that Plaintiff alleged or could have alleged against the Released Parties, on behalf of the Aggrieved Employees and the State of California, based on the facts and/or theories stated in the operative complaint and/or in Plaintiff’s notice letter to the LWDA, including all PAGA claims seeking civil penalties premised upon: (a) failure to pay minimum wages, (b) failure to provide meal periods, (c) failure to provide rest breaks, (d) failure to reimburse business expenses, (e) failure to failure to timely pay wages each period and upon separation of employment, (f) failure to provide accurate itemized wage statements, and (g) all other claims for civil penalties recoverable under the

Private Attorneys General Act, Labor Code §§ 2698 *et seq.* based on the facts or claims alleged in the operative complaint.

24. “Participating Class Member” means any and all Settlement Class Members who are deemed to participate, who will receive an Individual Settlement Payment, and who do not opt-out by submitting a timely, valid Request for Exclusion.

25. “Parties” or “Settling Parties” mean Plaintiff, the Settlement Class, and Defendant, collectively.

26. “Pay Periods Worked” or “Eligible Pay Periods,” in the context of Settlement Class Members, means all pay periods during the Class Period in which the Settlement Class Member was employed by Defendant as a truck driver while residing in California and worked in California at least one shift during the pay period. Likewise, in the context of Aggrieved Employees, these phrases mean all pay periods during the PAGA Period in which the Aggrieved Employee was employed by Defendant as a truck driver while residing in California and worked in California at least one shift during the pay period.

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

28. “Preliminary Approval Order” means the judicial Order to be entered by the Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement and providing for the issuance of the Notice to the Settlement Class, an opportunity to opt out of the Settlement, an opportunity to submit timely objections to the Settlement, and setting a hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees and costs.

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

30. “Released Class Claims” or “Class Claims” by the Participating Class Members upon Final Approval of the Settlement will include the following claims for the entire Class

Period:

- (a) any and all claims, wages, penalties, interest, debts, demands, rights, liabilities, costs, compensation, damages, injunctive and/or declaratory relief, attorneys' fees, actions, and/or causes of action that were pleaded or could have been pleaded based upon the factual allegations set forth by Plaintiff in the Complaint filed in this Action and arising at any time during the Class Period, including but not limited to all claims under the California Labor Code for unpaid minimum wages, off-the-clock work violations, failure to provide meal periods, failure to provide rest periods, unreimbursed business expenses, wage statement violations, interest, penalties, and attorneys' fees, waiting time penalties, withholding from wages and the related provisions of the Labor Code including Labor Code §§ 200-204, 208, 210, 216, 218.6, 226, 226.3, 226.7, 510, 512, 512.5, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802, derivative claims under California Business & Professions Code §§ 17200 et seq., and all claims under the governing Wage Order, and Fair Labor Standards Act; and
- (b) as to any Class Member who cashes their Settlement Payment, the Settlement Administrator shall include language on the Settlement Payments that informs the Class Members that the signing and negotiation of that check shall serve as the Class Member's consent to join the Action for purposes of releasing all claims arising under the Fair Labor Standards Act that are alleged in the Action or related to the claims stated or that could have been stated in the Action, implicitly or explicitly.

31. "Released Parties" means Defendant and its former, present and future direct and/or indirect owners, dba's, parents, subsidiaries, affiliated and related companies, divisions, successors, predecessors, or assigns, and past, current and future employees, attorneys, officers, directors, shareholders, owners, agents, trustees, accountants, auditors, consultants, insurers and

1 reinsurers, heirs, executors, administrators, predecessors, successors or assigns of any of the
2 foregoing.

3 32. “Release” shall mean the release and discharge of the Released Class Claims by
4 Plaintiff and all of the Participating Class Members and the release and discharge of the PAGA
5 Released Claims by Plaintiff, the State of California, and all of the Aggrieved Employees. The
6 *res judicata* effect of the Judgment will be the same as that of the Release of the Released Class
7 Claims and PAGA Released Claims.

8 33. “Request for Exclusion” means and refers to a valid and timely request for
9 exclusion from the Settlement of the Released Class Claims, which may be submitted by any
10 Settlement Class Member, other than Plaintiff, pursuant to Paragraph 72(a) below.

11 34. “Service Payment” or “Service Award” means, as set forth further in Paragraph
12 49(e) below, the amount approved by the Court to be paid to the Class Representative, Juan
13 Nieves, in addition to his Individual Settlement Payment as a Participating Class Member.

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

17 36. “Settlement Administration Costs” means the costs payable from the Gross
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 Gross Settlement Amount,
22 and providing necessary reports and declarations, as requested by the Parties. The Settlement
23 Administration Costs shall be paid from the Settlement Amount, including, if necessary, any
24 such costs in excess of the amount represented by the Settlement Administrator as being the
25 maximum costs necessary to administer the Settlement.

26 37. “Settlement Class” consists of all current and former truck drivers who resided in
27 California and who were employed by Defendant at any time during the Class Period. Defendant
28 represents that there are approximately 100 eligible Class Members.

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

39. Left blank intentionally.

B. General Terms

40. Plaintiff filed a class action and representative PAGA action complaint with the Court on December 21, 2021 against Defendant and Does 1 through 20, alleging class and representative PAGA claims, including: (1) failure to pay minimum and regular wages, (2) failure to provide meal periods, (3) failure to provide rest breaks, (4) failure to reimburse for business expenses, (5) failure to timely pay final wages, (6) failure to provide accurate itemized wage statements, (7) unfair and unlawful competition pursuant to Business and Professions Code §17200 *et seq.*, and (8) related claims under PAGA.

41. On March 11, 2022, Defendant removed the Action to the United States District Court for the Central District of California. Plaintiff advised of his intention to file a motion to remand, but the Parties stayed all motion practice pending the completion of mediation and agreed that any settlement reached at mediation would include a stipulation to remand the Action to state court.

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 payroll and timekeeping records for a random sampling of 20% of the 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

1 settlement with Defendant for the consideration and on the terms set forth in this Settlement
2 Agreement is fair, reasonable, and adequate and is in the best interest of the Class Members in
3 light of all known facts and circumstances, including the risk of significant delay and uncertainty
4 associated with litigation, various defenses asserted by Defendant, and numerous potential
5 appellate issues.

6 45. On May 6, 2022, Plaintiff and Defendant participated in mediation before the
7 Honorable Jonathan Cannon, a retired Judge who served in the Orange County Complex Civil
8 Department and now serves as mediator on wage and hour class action cases among other
9 matters. The Action resolved at mediation pursuant to a mediator's proposal.

10 46. On May 17, 2022, the District Court remanded the Action back to the Court in
11 accordance with the Parties stipulation to remand. The Parties agree that neither the Parties'
12 Settlement, this Agreement, nor the acts to be performed or judgments to be entered pursuant to
13 the terms of the Settlement and Agreement, shall be construed as an admission by Defendant of
14 any wrongdoing or violation of any statute or law or liability on the claims or allegations in the
15 Action.

16 47. Stipulation to Class Certification and Representative Treatment. For settlement
17 purposes only, Defendant will stipulate that the Settlement Class Members described herein who
18 do not submit a timely Request for Exclusion from the Settlement Class may be conditionally
19 certified as a settlement class and that the Aggrieved Employees are appropriate for
20 representative treatment for purposes of settlement. This stipulation to certification and
21 representative treatment is in no way an admission that class action certification and/or
22 representative treatment is proper and shall not be admissible in this or in any other action except
23 for the sole purpose of enforcing this Agreement. Nor should Defendant's stipulation to
24 conditional class certification and representative treatment be deemed as a waiver to any
25 additional defenses against class or representative action treatment, including but not limited to
26 Defendant's right to exclude Settlement Class Members who signed binding arbitration
27 agreements from participating in this Action. Should, for whatever reason, the Court fail to issue
28 Final Approval, the Parties' stipulation to class certification and representative treatment as part

1 of the Settlement shall become null and void *ab initio* and shall have no bearing on, and shall not
2 be admissible in connection with, the issue of whether or not certification and/or representative
3 treatment would be appropriate in a non-settlement context. Defendant expressly reserves its
4 rights and declares that it would continue to oppose class certification, representative treatment,
5 and the substantive merits of the case should the Court decline to issue Final Approval. Plaintiff
6 expressly reserves his rights and declares that he will continue to pursue class certification,
7 representative treatment, and a trial should the Court decline to issue Final Approval.

8 48. The Parties stipulate and agree to the certification of the proposed class for
9 settlement purposes only. The Parties further agree that this Stipulation will not be admissible in
10 this or any other proceeding as evidence that (i) a class action should be certified, (ii) a
11 representative action is appropriate or manageable, or (iii) Defendant is liable to Plaintiff or any
12 Class Member, other than for the obligations under this Agreement.

13 **C. Terms of Settlement**

14 49. The financial terms of the Settlement are as follows:

15 (a) Gross Settlement Amount: The Parties agree to settle this Action for Five
16 Hundred Thirty-Five Thousand Dollars (\$535,000) (“the Gross Settlement Amount”). The Gross
17 Settlement Amount is the maximum amount that will be paid, and includes Individual Settlement
18 Payments, Attorneys’ Fees and Costs Award, the Service Payment to the Class Representative,
19 all Settlement Administration Costs, PAGA Penalties, and interest. Defendant shall separately
20 pay the employer’s share of applicable payroll tax obligations due on the wage portions of the
21 Individual Settlement Payments, which shall be reported through the Settlement Administrator.

22 (b) Net Settlement Amount: The “Net Settlement Amount” is defined as the
23 Gross Settlement Amount less the court-approved Attorneys’ Fees and Costs Award, the court-
24 approved Service Payment to the Class Representative, the court-approved Settlement
25 Administration Costs, and PAGA Penalties. If the Court reduces the Attorneys’ Fees and Costs
26 Award, Service Payment to the Class Representative, or Settlement Administration Costs, or
27 either increases or decreases the amount allocated to the PAGA Penalties, the Net Settlement
28 Amount shall be increased or decreased accordingly.

1 (c) Individual Settlement Payments: Individual Settlement Payments for the
2 Settlement Class will be calculated and apportioned from the Net Settlement Amount based on
3 the number of Eligible Pay Periods a Settlement Class Member worked during the Class Period.
4 Specific calculations of Individual Settlement Payments will be made as follows:

- 5 • Defendant will calculate the total number of Pay Periods Worked by each
6 Settlement Class Member during the Class Period and the aggregate total
7 number of Pay Periods Worked by all Settlement Class Members during the
8 Class Period.
- 9 • To determine each Settlement Class Member's estimated Individual
10 Settlement Payment, the Settlement Administrator will use the following
11 formula: The Net Settlement Amount will be divided by the aggregate total
12 number of Pay Periods Worked, resulting in the "Pay Period Value." Each
13 Settlement Class Member's Individual Settlement Payment will be calculated
14 by multiplying his or her total number of Pay Periods Worked during the
15 Class Period by the Pay Period Value.
- 16 • Individual Settlement Payments will be reduced by any required deductions
17 for each Participating Class Member as specifically set forth herein, including
18 employee-side tax withholdings and deductions.
- 19 • The entire Net Settlement Amount will be disbursed to all Participating Class
20 Members. If there are any valid and timely Requests for Exclusion, the
21 Settlement Administrator shall proportionally increase the Individual
22 Settlement Payment for each Participating Class Member according to the
23 number of Pay Periods Worked, so that the amount actually distributed to the
24 Settlement Class equals 100% of the Net Settlement Amount.

25 (d) Allocation of Individual Settlement Payments: The Individual Settlement
26 Payments will be allocated based on the allegations in the Action as follows: One-third
27 (33.33%) will be allocated as wages subject to withholding of all applicable local, state and
28 federal taxes; and two-thirds (66.67%) will be allocated for interest and penalties (pursuant to,

e.g., California Labor Code sections 203, 210, 226, etc.) 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, in exchange for the services Plaintiff performed on behalf of the Class (including taking steps to support the Settlement) and for entering into the general and expansive release discussed hereinafter. Defendant agrees not to oppose this request if Plaintiff does not request exclusion from the Settlement Class and does not take any action, directly or indirectly, to undercut this Settlement. The Service Payment to Plaintiff will be paid out of the Gross 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 or to appeal this aspect of the Court's ruling. 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.

(f) Attorneys' Fees and Costs Award: Defendant will take no position on and agrees not to oppose a request by Class Counsel to the Court for an award of attorneys' fees of not more than one-third of the Gross Settlement Amount (\$178,333.33), plus reasonable litigation costs not to exceed \$20,000 ("Attorneys' Fees and Cost Award"), subject to Court approval. The Attorneys' Fees and Cost Award shall be paid from the Gross Settlement Amount, and except for this award, Defendant shall have no further obligation to pay any attorneys' fees, costs or expenses to Class Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel, the difference shall be added to the Net Settlement Amount to be distributed to the Participating Class Members. The Parties agree that any amount awarded as attorneys' fees and costs to Class Counsel less than the requested amount shall not be

1 a basis for Class Counsel to rescind or otherwise void this Settlement Agreement. The
2 Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount
3 of attorneys' fees and costs awarded by the Court.

4 (g) Settlement Administration Costs: The fees and other charges of the
5 Settlement Administrator will be paid from the Gross Settlement Amount, not to exceed \$6,500
6 unless approved by Plaintiff, Defendant, and the Court.

7 (h) PAGA Penalties: The Parties agree that \$50,000 is allocated to PAGA
8 Penalties and is to be paid from the Gross Settlement Amount, subject to the Court's approval.
9 Of this amount, \$37,500 (75%) shall be paid to the LWDA in satisfaction of civil penalties under
10 the Private Attorney General Act of 2004 ("PAGA") and \$12,500 (25%) will be paid to the
11 Aggrieved Employees based upon the number of Pay Periods Worked by each Aggrieved
12 Employee during the PAGA Period, which will be treated entirely as civil penalties and shall be
13 reported as required on an IRS Form 1099. Class Counsel shall give proper notice to the LWDA
14 of the Settlement.

15 (i) Tax Liability: Class Counsel, Defendant, and Defendant's counsel make
16 no representations as to the tax treatment or legal effect of Settlement Amounts called for
17 hereunder, and Plaintiff and the Settlement Class Members are not relying on any statement or
18 representation by Class Counsel, Defendant, or Defendant's counsel in this regard. Plaintiff,
19 Participating Class Members, and Aggrieved Employees understand and agree that they will be
20 solely responsible for the payment of any taxes and penalties assessed on their respective
21 Settlement Amounts described herein. The amount of federal income tax withholding will be
22 based upon a flat withholding rate for supplemental wage payments in accordance with Treas.
23 Reg. § 31.3402(g)-1(a)(2) as amended or supplemented. Income tax withholding will also be
24 made pursuant to applicable state and/or local withholding codes or regulations. Forms W-2
25 and/or Forms 1099 will be distributed at the times and in the manner required by the Internal
26 Revenue Code of 1986 (the "Code") and consistent with this Agreement. If the Code, the
27 regulations promulgated thereunder, or other applicable tax law, are changed after the date of this
28 Agreement, the processes set forth in this Section may be modified in a manner to bring

1 Defendant into compliance with any such changes. Plaintiff, Participating Class Members, and
2 Aggrieved Employees understand and agree that they will be solely responsible for the payment
3 of any taxes and penalties assessed on their respective payments described herein and will hold
4 Defendant harmless from and against any claims resulting from treatment of such payments as
5 non-taxable damages.

6 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
7 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
8 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
9 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
10 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
11 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
12 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
13 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
14 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
15 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
16 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
17 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
18 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
19 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
20 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
21 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
22 ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
23 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
24 ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
25 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR
26 ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
27 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
28 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING

1 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

2 50. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
3 Participating Class Members under this Agreement, as well as any other payments made
4 pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any
5 benefit plans to which any Settlement Class Members may be eligible, including, but not limited
6 to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase or other types of equity plans,
7 vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties'
8 intention that this Settlement will not affect any rights, contributions, or amounts to which any
9 Settlement Class Members may be entitled under any benefit plans. The Parties agree that the
10 amounts paid pursuant to this Settlement are not for days or hours worked, and shall not be
11 included toward any regular rate of pay calculation, or any benefit vesting or accrual purpose.

12 51. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under
13 no circumstances will any portion of the Gross Settlement Amount revert to Defendant.
14 Participating Class Members will not have to make a claim in order to receive an Individual
15 Settlement Payment, and Aggrieved Employees will not have to make a claim in order to receive
16 their share of PAGA Penalties. Distributions, in the form of Individual Settlement Payments,
17 will be made directly to each Participating Class Member and Aggrieved Employee. The
18 Settlement Administrator shall be responsible for accurately and timely reporting and remittance
19 obligations with respect to unclaimed funds as a result of a Participating Class Member or
20 Aggrieved Employee not cashing an Individual Settlement Payment by the check cashing
21 deadline, as set forth herein.

22 52. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable, and
23 adequate, and will so represent same to the Court.

24 **D. Release by Plaintiff and the Settlement Class**

25 53. Upon entry of the Final Approval Order and Defendant's funding of the
26 Settlement Amount, and except as to such rights or claims as may be created by this Settlement
27 Agreement, the Participating Class Members will forever completely release and discharge the
28 Released Parties from the Released Class Claims for the Class Period. It is the intent of the

1 Parties that the Final Approval Order and judgment entered by the Court shall have full equitable
2 and collateral estoppel and *res judicata* effect and be final and binding upon Participating Class
3 Members regarding the Released Class Claims.

4 54. Each Participating Class Member will be deemed to have made the foregoing
5 Release as if by manually signing it.

6 55. Upon entry of the Final Approval Order and Defendant's funding of the
7 Settlement Amount, Plaintiff, standing in the shoes of the Labor Commissioner/LWDA, and on
8 behalf of the State of California and all Aggrieved Employees, will forever completely release
9 and discharge the Released Parties from the PAGA Released Claims through the PAGA Period.
10 It is the intent of the Parties that the Final Approval Order and judgment entered by the Court
11 shall have full equitable and collateral estoppel and *res judicata* effect and be final and binding
12 upon Aggrieved Employees regarding the PAGA Released Claims.

13 56. Each Aggrieved Employee and the LWDA will be deemed to have made the
14 foregoing Release as if by manually signing it.

15 57. Plaintiff and Defendant intend that the Settlement described in this Agreement
16 will release and preclude any further claim, whether by lawsuit, administrative claim or action,
17 arbitration, demand, or other action of any kind, by each and all of the Participating Class
18 Members to obtain a recovery based on, arising out of, and/or related to any and all of the
19 Released Class Claims. The Class Members shall be so notified in the Notice. This paragraph
20 only applies to Participating Class Members and, thus, does not apply to any Class Member who
21 timely and validly submits a Request for Exclusion, nor does it apply to Aggrieved Employees
22 with respect to the PAGA Released Claims.

23 58. Plaintiff and Defendant also intend that the Settlement described in this
24 Agreement will release and preclude any further PAGA claim, whether by lawsuit,
25 administrative claim or action, arbitration, demand, or other PAGA action of any kind, by each
26 and all of the Aggrieved Employees to obtain a recovery based on, arising out of, and/or related
27 to any and all of the PAGA Released Claims. The Aggrieved Employees shall be so notified in
28 the Notice and Class Counsel shall provide appropriate notice to the LWDA of this Agreement

1 prior to the filing of the Motion for Preliminary Approval. This section is not intended to
2 preclude any Aggrieved Employee other than Plaintiff from bringing any claim other than a
3 PAGA claim, except for other Released Class Claims set forth in this Agreement.

4 59. Class Representative, on behalf of himself and the Participating Class Members,
5 acknowledges and agrees that the claims, including claims for unpaid wages and untimely
6 payment of wages, are disputed, and that the payments set forth herein constitute payment of all
7 sums allegedly due to them. Class Representative, on behalf of himself and the Participating
8 Class Members, acknowledges and agrees that California Labor Code Section 206.5 is not
9 applicable to the Parties hereto. Section 206.5 provides in pertinent part as follows:

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

13 **E. Release by Class Representative**

14 60. As a material inducement to Defendant to enter into this Settlement Agreement
15 and in consideration of the Enhancement Award, and in addition to the Class Representative's
16 release of the Released Class Claims and PAGA Released Claims, Class Representative does
17 hereby, for himself and for his respective spouses, domestic partners, marital community,
18 children, estates, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors,
19 administrators, trustees, conservators, guardians, personal representatives, and assigns forever
20 and completely release and discharge and covenants not to sue the Released Parties with respect
21 to any and all claims, demands, liens, agreements, contracts, covenants, actions, suits, causes of
22 action, wages, obligations, debts, liquidated damages, penalties, interest, costs, expenses,
23 attorneys' fees, damages, judgments, orders and liabilities of whatever kind or nature in law,
24 equity or otherwise, whether now known or unknown, suspected or unsuspected, concealed or
25 hidden, which Plaintiff now owns or holds or has at any time heretofore owned or held as against
26 said Released Parties, or any of them. Such released claims include specifically, but not
27 exclusively and without limiting the generality of the foregoing, any and all claims, demands,
28 agreements, obligations and causes of action, known or unknown, suspected or unsuspected,

1 concealed or hidden, including but not limited to all claims arising out of, based upon, or relating
2 to Class Representative's employment with Defendant or the remuneration for or termination of
3 such employment, as alleged in the operative Complaint, arising out of or in any way connected
4 with any transactions, occurrences, acts or omissions set forth, or facts alleged, in any and all
5 charges, complaints, claims or pleadings filed by Class Representative against any Released
6 Party prior to the date hereof with any city, county, state or federal agency, commission, office or
7 tribunal whatsoever; or arising out of or in any way connected with any transactions,
8 occurrences, acts or omissions occurring prior to the date hereof, including specifically without
9 limiting the generality of the foregoing any claim under Title VII of the Civil Rights Act of 1964,
10 the Age Discrimination in Employment Act (29 U.S.C. Section 621 *et seq.*), the Americans with
11 Disabilities Act, the Employee Retirement Income Security Act, the National Labor Relations
12 Act, the Fair Labor Standards Act, the Family and Medical Leave Act, the California
13 Constitution, the California Labor Code, the California Civil Code, the California Government
14 Code, the California Business & Professions Code, the California Family Rights Act, the
15 California Fair Employment and Housing Act, or any other federal, state, or local statute or
16 regulation (collectively, the "Class Representative's Claims").

17 61. Class Representative agrees that there is a risk that any injury that he may have
18 suffered by reason of the Released Parties' relationship with him might not now be known, and
19 there is a further risk that said injuries, whether known or unknown at the date of this Settlement
20 Agreement, might possibly become progressively worse, and that as a result thereof further
21 damages may be sustained. Nevertheless, Class Representative agrees to forever and fully
22 release and discharge the Released Parties, and understands that by the execution of this
23 Settlement Agreement no further claims for any such injuries that existed at the time of the
24 execution of this Settlement Agreement may ever be asserted by Class Representative with
25 respect to claims arising in the time period from the beginning of time to the execution of this
26 Settlement Agreement.

27 62. Class Representative expressly waives and relinquishes all rights and benefits
28 afforded by Section 1542 of the Civil Code of the State of California and does so understanding

1 and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil
2 Code of the State of California states:

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

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

20 63. Class Representative represents and warrants that he has not filed and will not file
21 any other lawsuit, administrative claim or action, arbitration, demand, or other action of any kind
22 against Defendant or the Released Parties. Class Representative represents and warrants that the
23 only pending claims against Defendant or the Released Parties are included in this Action.

24 **F. Interim Stay of Proceedings**

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

28 **G. Notice Process**

65. Appointment of Settlement Administrator. The Parties have agreed to the
appointment of the Settlement Administrator to perform the duties of a settlement administrator,
including mailing the Notice, using standard devices to obtain forwarding addresses,

1 independently reviewing and verifying documentation associated with any claims or opt-out
2 requests, resolving any disputes regarding the calculation or application of the formula for
3 determining the Individual Settlement Payments, drafting and mailing the settlement checks to
4 Participating Class Members, and Aggrieved Employees, issuing W-2 and 1099 Tax Forms,
5 performing unclaimed funds due diligence, reporting and performing remittance obligations, and
6 performing such other tasks as set forth herein or as the Parties mutually agree or that the Court
7 orders.

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

20 67. Class Data. Within 14 calendar days after entry of the Preliminary Approval
21 Order, Defendant shall provide the Class Data to the Settlement Administrator. The Settlement
22 Administrator will run a check of the Class Members' addresses against those on file with the
23 U.S. Postal Service's National Change of Address Database. The Class Data provided to the
24 Settlement Administrator will remain confidential, shall be used solely to administer the
25 Settlement, and it will not be used or disclosed to anyone but Class Counsel pursuant to a
26 Stipulated Protective order, except as required by applicable tax authorities, pursuant to
27 Defendant's express written consent, or by order of the Court. Nothing herein shall prevent
28 Class Counsel from communicating with Class Members regarding the Action and Settlement.

1 The Settlement Administrator will be required to sign and provide to Defendant a Certification
2 Regarding Confidential Discovery Materials and to be bound by a Stipulated Protective Order as
3 entered by the Court. The Settlement Administrator shall use due care with respect to the storage,
4 custody, use, and/or dissemination of the confidential information. Such information must be
5 stored in a secure fashion and all persons who access the data must agree to keep it confidential.

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

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

21 70. Disputes Regarding Information on Notices of Settlement. Class Members are
22 deemed to participate in the Settlement, unless they timely opt-out, and Aggrieved Employees
23 may not opt out of the PAGA Released Claims. The Notice will inform Class Members of
24 his/her estimated Individual Settlement Payment and the number of Pay Periods Worked during
25 the Class Period and during the PAGA Period. Class Members may dispute their Pay Periods
26 Worked if they feel they should be credited with more Eligible Pay Periods than Defendant's
27 records show by timely submitting evidence to the Settlement Administrator. Defendant's
28 records will be presumed determinative absent reliable evidence to rebut Defendant's records,

1 but the Settlement Administrator will evaluate the evidence submitted by the Class Member and
2 provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet and
3 confer in good faith about the evidence to determine the Class Member's actual number of Pay
4 Periods Worked and estimated Individual Settlement Payment. If Class Counsel and Defense
5 Counsel are unable to agree, they agree to submit the dispute to the Settlement Administrator to
6 render a final decision. Class Members will have until the Notice Response Deadline to dispute
7 Pay Periods Worked, object or opt out, unless extended by the Court. In the event that the
8 Settlement Administrator increases the number of Pay Periods Worked for any Settlement Class
9 Member, then the Settlement Administrator will recalculate the Participating Class Members'
10 Individual Settlement Payments; accordingly, in no event will Defendant be required to increase
11 the Gross Settlement Amount.

12 71. Declaration of Due Diligence. The Settlement Administrator shall provide
13 counsel for the Parties, at least twenty-five (25) calendar days prior to the final approval hearing,
14 a declaration of due diligence and proof of mailing with regard to the mailing of the Notices of
15 Settlement.

16 72. Settlement Class Members' Rights. Each Settlement Class Member will be fully
17 advised of the Settlement, the ability to object to the provisions in the Settlement related to the
18 Released Class Claims, and the ability to opt-out or request exclusion from the Settlement with
19 respect to the Released Class Claims. The Notice will inform the Settlement Class Members of
20 the Court-established deadlines for filing objections or requesting exclusion from the Settlement
21 with respect to the Released Class Claims in accordance with the following guidelines:

22 (a) Requests for Exclusion from Participating in the Settlement Class. Any
23 Settlement Class Member, other than Plaintiff, may request to be excluded from the Settlement
24 Class by submitting a "Request for Exclusion" to the Settlement Administrator, postmarked on
25 or before the Notice Response Deadline. The Request for Exclusion should state:

26 "I WISH TO BE EXCLUDED FROM THE SETTLEMENT
27 CLASS IN THE KLLM LAWSUIT. I UNDERSTAND THAT IF I
28 ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I
WILL NOT RECEIVE ANY MONEY FROM THE

1 SETTLEMENT OF THIS LAWSUIT.”

2 To be valid, any Request for Exclusion must include the full name, address, telephone
3 number, last four digits of the social security number or date of birth, and signature of the
4 Settlement Class Member requesting exclusion. The Request for Exclusion must be returned by
5 mail to the Settlement Administrator at the specified address set forth in the Notice. Any such
6 Request must be made in accordance with the terms set forth in the Notice. A Request for
7 Exclusion will be timely only if postmarked by the Notice Response Deadline, unless the Parties
8 otherwise agree in writing. Any Settlement Class Member who timely requests exclusion in
9 compliance with these requirements: (i) will not have any rights under this Agreement with
10 respect to the Released Class Claims, including the right to object, appeal, or comment on the
11 Settlement; (ii) will not be entitled to receive any payments under this Agreement for the
12 Released Class Claims; and (iii) will not be bound by this Agreement, or the Judgment, with
13 respect to the Released Class Claims. Any Aggrieved Employee who requests timely exclusion
14 will still be subject to the PAGA Released Claims to the fullest extent permitted by law and shall
15 be sent his or her share of PAGA Penalties.

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

23 (c) Objections to Settlement of the Released Class Claims. Any Settlement
24 Class Member, other than Plaintiff, may object to the terms of this Agreement, except as to the
25 PAGA Released Claims. To object, a Settlement Class Member shall inform the Settlement
26 Administrator, in writing, at least 10 calendar days before the Final Approval Hearing, of his or
27 her objection which must be postmarked by the Notice Response Deadline at the address set
28 forth in the Notice. Such objection shall include the objecting Settlement Class Member’s full

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

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

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

28 (f) Settlement Class Members will have until the Notice Response Deadline

1 to object or submit a Request for Exclusion to the Settlement Administrator by U.S. Mail. The
2 Settlement Administrator shall disclose jointly to Class Counsel and Defendant's counsel what
3 objections or Requests for Exclusion were timely submitted on a weekly basis, and upon the
4 request of Class Counsel or Defense Counsel.

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

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

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

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

21 76. No person shall have any claim against Defendant or the Released Parties,
22 Defendant's Counsel, Plaintiff, Class Counsel, or the Settlement Administrator based on
23 mailings, distributions, payments or reports made in accordance with or pursuant to this
24 Agreement. This provision does not, however, prevent a Party from seeking enforcement of this
25 Agreement.

26 77. Without prejudice to any other remedies, the Settlement Administrator shall agree
27 to be responsible for any breach of its obligations (whether committed by the Settlement
28 Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless

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

78. 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 of 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 solely for purposes of this Settlement.

79. Reallocation of Settlement Proceeds. In the event the Court fails, on its first hearing, to approve this Agreement because the amount of the PAGA Penalties is not adequate, then the Parties shall cooperate in good faith to reallocate the total settlement proceeds, within this Agreement, in order to try to achieve Final Approval of the Agreement upon any subsequent Court hearings.

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

80. 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 Final Judgment based on the terms set forth in this Agreement,

1 thereby permanently barring all Participating Class Members from prosecuting any Released
2 Class Claims against any of the Released Parties and permanently barring all Aggrieved
3 Employees and the LWDA from prosecuting any PAGA Released Claims against any of the
4 Released Parties.

5 81. Final Judgment. The Settlement Administrator shall give the Participating Class
6 Members and Aggrieved Employees notice of the entry of Final Judgment on a postcard or letter
7 that will be included with the Individual Settlement Payments.

8 **J. Voiding the Agreement**

9 82. If ten percent (10%) or more of the Class Members submit a timely and valid
10 Request for Exclusion, Defendant will have, in its sole discretion, the right to void and withdraw
11 from the Settlement by giving written notice to Class Counsel and the Settlement Administrator
12 within ten (10) days after expiration of the Notice Response Deadline.

13 83. All Parties, signatories, and their counsel shall not encourage opt-outs or
14 objections to this Agreement. The Parties specifically agree not to solicit opt-outs, directly or
15 indirectly, through any means.

16 84. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will
17 have no further obligations under the Settlement, including any obligation by Defendant to pay
18 the Gross Settlement Amount, or any amounts that otherwise would have been owed under this
19 Settlement.

20 85. If the Settlement is voided or fails for any reason, any costs incurred by the
21 Settlement Administrator shall be borne equally by Defendant and Plaintiff, unless otherwise
22 specified in this Agreement.

23 **K. Other Terms**

24 86. Waiver. The waiver by one Party of any breach of this Agreement by another
25 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

26 87. No Waiver of Defendant's Arbitration Agreements. The Parties agree that this
27 Settlement and any effort to obtain the Court's approval of the Settlement, including but not
28 limited to, seeking conditional certification of Class for the sole purpose of settlement, does not

1 constitute a waiver of Defendant's right to seek to enforce any alleged arbitration agreements
2 entered into between Defendant and some Class Members in the Action or any future
3 proceedings.

4 88. Full and Complete Defense. This Agreement may be pleaded by any Released
5 Party as a full and complete defense to, and may be used as the basis for an injunction against,
6 any action, suit, or other proceeding that has been or may be instituted, prosecuted or attempted,
7 asserting any Released Claim.

8 89. Parties' Authority. The signatories hereto represent that they are fully authorized
9 to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions
10 hereof. The signatories hereto further represent that the Parties to this Agreement are
11 represented by competent counsel, and they have had an opportunity to consult with counsel
12 prior to authorizing its execution.

13 90. No Publicity. The Parties will not publicize the Settlement or disclose it to third
14 parties, except as required or necessary to effectuate its terms and comply with law, including the
15 payment of taxes. Specifically, Plaintiff and Plaintiff's counsel shall not publicize the settlement
16 on their websites, in advertising/marketing materials or on social media. The Parties and their
17 counsel agree that they will not issue any press releases or initiate any contact with the media
18 about the fact, amount, or terms of the settlement. If counsel for any party receives an inquiry
19 about the settlement from the media, counsel may respond only after the motion for preliminary
20 approval of the settlement has been filed and only by confirming the accurate terms of the
21 settlement. Nothing in this provision shall prevent Defendant from making any required
22 disclosure.

23 91. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
24 accomplish the terms of this Settlement Agreement, including but not limited to, execution of
25 such documents and to take such other action as may reasonably be necessary to implement the
26 terms of this Settlement Agreement. The Parties to this Settlement Agreement shall use their
27 best efforts, including all efforts contemplated by this Settlement Agreement and any other
28 efforts that may become necessary by order of the Court, or otherwise, to effectuate this

1 Settlement Agreement and the terms set forth herein. As soon as practicable after execution of
2 this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of
3 Defendant and Defendant's Counsel, take all necessary steps to secure the Court's preliminary
4 and final approval of the settlement, and the final entry of judgment. Class Counsel shall provide
5 Defendant's Counsel with copies of the Preliminary Approval Motion and Final Approval
6 Motion for review at least five court days prior to the filing deadline.

7 92. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
8 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
9 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
10 cause of action or rights released and discharged by this Settlement Agreement.

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

20 94. Inadmissibility of Agreement. Whether or not the Court issues the Final
21 Approval Order, nothing contained herein, nor the consummation of this Settlement Agreement,
22 is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on
23 the part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered
24 into this Settlement Agreement with the intention of avoiding further disputes and litigation with
25 the attendant inconvenience and expenses. This Settlement Agreement is a settlement document,
26 and it, along with all related documents such as the notices, and motions for preliminary and
27 final approval, shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of
28 Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to

1 approve the settlement, and/or interpret or enforce this Settlement Agreement. The stipulation
2 for class certification as part of this Settlement Agreement is for settlement purposes only and if,
3 for any reason the settlement is not approved, the stipulation will have no force or effect.

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

8
9 To the Settlement Class Members and Aggrieved Employees:

10 Brian Mankin
11 *brian@LMLfirm.com*
12 Lauby, Mankin & Lauby LLP
13 5198 Arlington Avenue, PMB 513
14 Riverside, CA 92501
15 Tel: (951) 320-1444 | Fax: (951) 320-1445

16 To Defendant:

17 Dessi N. Day
18 *dday@greeneroberts.com*
19 GREENE & ROBERTS
20 402 West Broadway, Suite 1025
21 San Diego, CA 92101
22 Tel: (619) 398-3400 | Fax: (619) 330-4907

23 G. Clark Monroe II
24 *gcmonroe@dunbarmonroe.com*

25 DUNBARMONROE, PLLC
26 270 Trace Colony Park Drive
27 Ridgeland, Mississippi 39157
28 Tel: (601) 898-2716 | Fax: (601) 898-2074

96. 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

1 Settlement Agreement. Plaintiff and Defendant expressly waive the common-law and statutory
2 rule of construction that ambiguities should be construed against the drafter of an agreement and
3 further agree, covenant, and represent that the language in all parts of this Agreement shall be in
4 all cases construed as a whole, according to its fair meaning.

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

9 98. Modification. This Settlement Agreement may not be changed, altered, or
10 modified, except in writing and signed by the Parties hereto, and approved by the Court. This
11 Settlement Agreement may not be discharged except by performance in accordance with its
12 terms or by a writing signed by all of the Parties hereto.

13 99. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
14 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
15 provide written notice to the other Party and allow an opportunity to cure the alleged
16 deficiencies, and Plaintiff and Defendant agree to seek the help of the mediator identified in this
17 Agreement to resolve any dispute they are unable to resolve informally. During this period, the
18 Parties shall bear their own attorneys' fees and costs. This provision shall not apply to any legal
19 action or other proceeding instituted by any person or entity other than Plaintiff or Defendant.

20 100. Court Retains Jurisdiction. The Parties agree that upon the entry of judgment of
21 dismissal pursuant to the terms of this Agreement, that, pursuant to Code of Civil Procedure
22 Section 664.6, the Court shall retain exclusive and continuing equity jurisdiction of this Action
23 over all Parties to interpret, enforce, and effectuate the terms, conditions, intents, and obligations
24 of this Agreement.

25 101. Enforceability. Pursuant to California Evidence Code Section 1123(a) and (b),
26 this Agreement is intended by the Parties to be, and shall be, enforceable, binding, and
27 admissible in a court of law.

28 102. Choice of Law. This Settlement Agreement shall be governed by and construed,

1 enforced and administered in accordance with the laws of the State of California.

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

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

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

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

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

25 108. Confidentiality and Public Comment. The Parties and attorneys will keep the
26 terms of the settlement confidential until the filing of the motion for preliminary approval of the
27 class settlement. Thereafter, the Parties agree to make no comments to the media or otherwise
28 publicize the terms of the Settlement to any settlement or verdict reporting service or on their

1 websites or social media. Class Counsel will not include or use the settlement for any marketing
2 or promotional purposes other than as expressly allowed above.

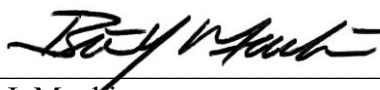
3 Dated: August ___, 2022

PLAINTIFF AND CLASS REPRESENTATIVE:

4 _____
5 Juan Nieves

6
7 Dated: August 18, 2022

CLASS COUNSEL:
LAUBY MANKIN LAUBY LLP

8 
9 _____
10 Brian J. Mankin
11 Peter J. Carlson
12 Attorneys for Plaintiff

13 Dated: August ___, 2022

DEFENDANT:
KLLM TRANSPORT SERVICES, LLC

14
15
16 By: _____
17 Title: _____

18 Dated: August ___, 2022

DEFENDANT'S COUNSEL:
GREEN & ROBERTS LLP

19
20
21 _____
22 Dessi N. Day
23 Attorney for Defendant

24 Dated: August ___, 2022

DEFENDANT'S COUNSEL:
DUNBARMONROE, PLLC

25
26 _____
27 Clark Monroe
28 Attorney for Defendant

END OF DOCUMENT

1 websites or social media. Class Counsel will not include or use the settlement for any marketing
2 or promotional purposes other than as expressly allowed above.

3 Dated: August ___, 2022

PLAINTIFF AND CLASS REPRESENTATIVE:

4
5 _____
Juan Nieves

6
7 Dated: August ___, 2022

CLASS COUNSEL:
LAUBY MANKIN LAUBY LLP

8
9 _____
10 Brian J. Mankin
11 Peter J. Carlson
Attorneys for Plaintiff

12
13 Dated: August 10, 2022

DEFENDANT:
KLLM TRANSPORT SERVICES, LLC

14
15 _____
16 By:  Tracy Bilko
17 Title: VP, Human Resources

18
19 Dated: August 10, 2022

DEFENDANT'S COUNSEL:
GREEN & ROBERTS LLP

20
21 _____
22 Dessi N. Day
Attorney for Defendant

23
24 Dated: August 10, 2022

DEFENDANT'S COUNSEL:
DUNBARMONROE, PLLC

25
26 _____
27 Clark Monroe
Attorney for Defendant

28
END OF DOCUMENT

EXHIBIT “B”

NOTICE OF SETTLEMENT OF CLASS AND REPRESENTATIVE ACTION

Juan Nieves v. KLLM Transport Services, LLC
Superior Court of the State of California, County of San Bernardino
Case No. CIVSB2134796

To: all current and former truck drivers who resided in California and were employed by KLLM Transport Services, LLC (“KLLM”), at any time between December 21, 2017, and [INSERT DATE], 2022 (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 [INSERT DATE], 2022, 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 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 pay periods you drove a truck for KLLM while residing in California between December 21, 2017, and [INSERT DATE], 2022 (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 [INSERT DATE] (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 [INSERT DATE] (see Section V(C) for more details on how to object).
DISPUTE YOUR NUMBER OF PAY PERIODS CREDITED	If you believe that the number of pay periods 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 pay periods). Defendant’s records will be presumed correct, but you may provide evidence to the Settlement Administrator showing that your Pay Period calculation is inaccurate.

I. Why should I read this Notice?

The Court has granted preliminary approval of a proposed settlement (the “Settlement”) in *Nieves v. KLLM Transport Services, LLC*, San Bernardino County Superior Court Case No. CIVSB2134796 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

KLLM’s records show that you were employed as a truck driver while residing in California at some point between December 21, 2017, and [INSERT DATE], 2022 (“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 KLLM as a truck driver and lived 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 December 21, 2021, Plaintiff and Class Representative Juan Nieves (“Plaintiff” or “Class Representative”), through his attorneys (“Class Counsel”), filed a class action complaint against KLLM for alleged wage and hour violations on behalf of all current and former truck drivers who were employed by KLLM and resided in California at any time since December 21, 2017. The Lawsuit that alleges that KLLM violated various Labor Code sections by failing to pay wages for all hours worked, failing to provide proper meal breaks, failing to provide paid rest breaks, failing to reimburse for business expenses, failing to timely pay final wages, and failing to provide accurate and complete wage statements during the Claim Period. The Lawsuit also sought equitable relief under the Unfair Competition Law. All of 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 December 21, 2020, and [INSERT DATE], 2022 (“PAGA Period”).

KLLM 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, KLLM 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. KLLM 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, KLLM 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 KLLM, 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 KLLM, this Settlement will not affect your employment. California law strictly prohibits unlawful retaliation. Further, KLLM 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?

<u>Attorneys for Plaintiff and Class Members:</u>	<u>Attorneys for Defendant:</u>
Brian Mankin <i>brian@LMLfirm.com</i> Peter Carlson <i>peter@LMLfirm.com</i> Lauby Mankin Lauby LLP 4590 Allstate Drive Riverside, CA 92501 Tel: (951) 320-1444	Dessi Day <i>dday@greeneroberts.com</i> Greene & Roberts 402 West Broadway, Suite 1025 San Diego, CA 92101 Tel: (619) 398-3400 G. Clark Monroe II (<i>pro hac vice</i>) <i>gcmonroe@dunbarmonroe.com</i> DUNBARMONROE, PLLC 270 Trace Colony Park Drive Ridgeland, Mississippi 39157 Telephone: (601) 898-2716

IV. What are the terms of the Settlement?

On [INSERT DATE], the Court certified a class, for settlement purposes only, of all non-exempt employees employed by KLLM in California at any time from December 21, 2017, through [INSERT DATE], 2022 (the “Settlement Class” or “Class Members”) and approved a representative class comprised of all truck drivers employed by KLLM who resided in California at any time from December 21, 2020, and [INSERT DATE], 2022 (“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 KLLM.

Without admitting any wrongdoing, KLLM has agreed to pay \$535,000 (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 ILYM Group 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 \$6,500 will be paid from the Gross Settlement Amount to pay the Settlement Administration Costs.

<u>Settlement Administrator:</u>
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, \$50,000 of the Gross Settlement Amount will be allocated to Plaintiff’s PAGA Claims. Of this amount, \$37,500 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 \$12,500 will be divided between all Aggrieved Employees based on the number of pay periods worked 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. Aggrieved Employees includes “all current and former truck drivers employed by KLLM who resided in California at any time during the PAGA Period.” You will receive your allocated portion of this payment and will be bound by the release of all such PAGA Claims without regard to your selected option discussed in Section V, below.

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 him 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 (\$178,333.33) 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 \$[INSERT AMOUNT]. Individual Settlement Payments to Class Members will be calculated and apportioned from the Net Settlement Amount based on the number of Pay Periods a Settlement Class Member is credited with working during the Class Period. A Class Member is credited with one Pay Period Worked each time the Class Member works at least one shift during the Class Period as a truck driver residing in California. Specific calculations of Individual Settlement Payments will be made as follows: the Settlement Administrator will divide the total Pay Periods Worked by all Settlement Class Members into the Net Settlement Amount to determine a per "Pay Period Value." The Pay Period Value will be multiplied by the number of Pay Periods 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).

For each Settlement Class Member, the Pay Periods Worked at KLLM during the Class Period will be calculated from KLLM's records. KLLM's records indicate that you worked for **[TOTAL PAY PERIODS] Pay Periods** while residing in California during the Class Period of December 21, 2017 and **[INSERT DATE]**, 2022. If you disagree with this number, you may submit evidence to the Settlement Administrator on or before **[REDACTED]**, 2022, with documentation to establish the number of eligible Pay Periods you claim to have actually worked for KLLM while living in California between December 21, 2017, and **[INSERT DATE]**, 2022. **DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED; DO NOT SEND ORIGINALS.** The Settlement Administrator will render a final decision.

Payments to Class Members. After the Court grants Final Approval of the Settlement and after Judgment is entered, settlement checks will be mailed to all Participating Class Members who did not timely request to be excluded. For those Aggrieved Employees who requested to be excluded from the settlement of the Class Claims, their settlement checks will be for their share of PAGA civil penalties only for release of the PAGA Claims, and they will not include any payment for settlement of the Class 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.

Allocation and Taxes. One-third (33.33%) of the Individual Settlement Payment distributed to each Participating Class Member will be considered and reported as wages (Form W-2 reporting). The remaining two-thirds (66.67%) 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, KLLM and its 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 and shall hold harmless KLLM from any

claim or liability for taxes, penalties, or interest arising as a result of the Class Members' and Aggrieved Employees' failure to pay their share of any taxes. 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, Plaintiff and all Class Members who do not submit a valid opt-out/request for exclusion will fully release and discharge Defendant and its their past, present and future officers, directors, owners, shareholders, employees, agents, principals, heirs, trustees, executors, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective parent corporations, dba's, subsidiaries, divisions, affiliates, attorneys, administrators, predecessors, successors and assigns (the "Released Parties") from any and all claims stated in the Complaint and those that could have been stated based upon the facts alleged in the Complaint, including but not limited to all claims under the California Labor Code for unpaid wages, failure to pay minimum wages, failure to provide meal periods, failure to provide rest breaks, failure to reimburse business expenses, failure to failure to timely pay wages each period and upon separation of employment, failure to provide accurate itemized wage statements, unfair and unlawful competition, all applicable claims under the governing Wage Order and FLSA (for those who cash their settlement payment), and all other claims for damages, civil and/or statutory penalties based on the facts or claims alleged in the operative 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 December 21, 2017, and [INSERT DATE], 2022("Class Period").

Release of PAGA Claims. Also upon the Court's final approval of the Settlement, 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 all PAGA claims that Plaintiff alleged or could have alleged against the Released Parties, on behalf of the Aggrieved Employees and the State of California, based on the facts and/or theories stated in the operative complaint and/or in Plaintiff's notice letter to the LWDA, including all PAGA claims seeking civil penalties premised upon: (a) failure to pay minimum wages, (b) failure to provide meal periods, (c) failure to provide rest breaks, (d) failure to reimburse business expenses, (e) failure to failure to timely pay wages each period and upon separation of employment, (f) failure to provide accurate itemized wage statements, and (g) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.* based on the facts or claims alleged in the operative 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 December 21, 2020, and [INSERT DATE], 2022("PAGA Period").

Waiver of Labor Code Section 206.5(e). Participating Class Members will be deemed to have acknowledged and agreed that their claims for wages and/or penalties 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 Section 206.5 is not applicable to the Individual Settlement Payments. That 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 an Individual Settlement Payment unless you exclude yourself from the settlement by following the opt-out procedure set forth below. If you disagree with the number of Pay Periods Worked, as described in this Notice, you may dispute the allocation of the Settlement without excluding yourself or objecting, as described above. It is the responsibility of all Class Members to ensure that the Settlement Administrator has your current address on file, or you may not receive important information or an Individual Settlement Payment.

If you are a current employee, your decision as to whether or not to participate in this Settlement will not be considered by KLLM, who will not take any adverse employment action against you based on your participation or decision not to participate in this Settlement.

- 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 [INSERT DATE] 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 KLLM TRANSPORT SERVICES 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 [INSERT ADDRESS]. 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 at KLLM, 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 [INSERT ADDRESS]. 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 Pay Periods Worked. To dispute the number of Pay Periods 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 [INSERT DATE], at [insert time] 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 [INSERT DATE]. 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.

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 KLLM 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 [INSERT DATE] at [INSERT TIME] 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 [INSERT DATE]. The deadline for mailing an objection to the Settlement Administrator is [INSERT DATE].

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 “C”



December 17, 2021

Submitted Via Online Filing to the LWDA

Sent Via U.S. Mail and Certified Mail

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

KLLM Transport Services, LLC
3400 Stonewell Drive
Lancaster, TX 75134

Re: PAGA Civil Penalty Claim
Juan Nieves v. KLLM Transport Services, LLC

To the Labor and Workforce Development Agency and KLLM Transport Services, LLC:

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 Juan Nieves (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his employer(s), KLLM Transport Services, LLC and/or any affiliated entities, as well as its owners (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 September through December 2021. Claimant alleges that, at all relevant times, he and all other truck drivers who resided in California and that were employed by the Company (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations that Claimant was subjected to during 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. Specifically, Claimant alleges that the Company’s pay policy did not compensate the Aggrieved Employees for all time spent under the Company’s direction and control. See *Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575 (employees must be paid for all time that the employer either knew, or reasonably should have known, that its employees are subject to its control or otherwise working). Additionally, the Company often paid “trip pay” and/or piece-rate compensation to the Aggrieved Employees which did not compensate for all hours worked.

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.

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 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 but not limited to 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 regular 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 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 she worked under the joint direction and control of KLLM 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 KLLM and the Owners acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, KLLM and the Owners are an integrated enterprise and should be treated as a single employer because KLLM 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, KLLM 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 KLLM 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 KLLM 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 KLLM 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, KLLM 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 KLLM 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, KLLM 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 KLLM 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 KLLM 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:

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM AND REGULAR 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 and regular wages to Claimant and the Aggrieved Employees due to the Company’s failure to accurately record and compensate for all hours worked. 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 and regular 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.

**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 state any information about hours worked); failure to state the inclusive dates of the pay period (the wage statement failed to list the pay period start date); failure to state the applicable hourly rates (including the failure to accurately state the “differential” rate of pay); failure to accurately state the corresponding number of hours worked at each hourly rate (including the failure to state the hours worked at the “differential” rate); failure to state the name and address of the legal entity that is the employer (the wage statements incorrectly listed the employer as “KLLM, INC.”, an entity that no longer exists); failure to accurately state gross wages earned; failure to accurately state all deductions; failure to accurately state net wages earned; and the failure to accurately state the amount and rate of pay for meal and rest period violations. Accordingly, Labor Code §§ 226.3 and 2699 impose civil penalties and/or assessments for these violations.

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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.

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@lmlfirm.com



EXHIBIT “D”