

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [CSB No. 295611]
peter@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

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

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

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

Hearing
Date: March 23, 2023
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. I manage the employment law department and am a partner with the law firm of Lauby Mankin Lauby LLP, which has offices in Orange County and Riverside County. I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Final Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

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1 **COUNSEL'S EXPERIENCE**

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

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

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

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

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

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8. As set forth in the Declaration of the Settlement Administrator, the Net Settlement Amount is approximately \$287,680.09, after the deductions set forth in the chart below:

	Total Amount
<i>Gross Settlement Amount</i>	\$ 535,000.00
Attorneys' Fees (1/3)	\$ 178,333.33
Litigation Costs	\$ 7,486.58
Administrator Costs	\$ 6,500.00
PAGA Penalties	\$ 50,000.00
Class Representative's Service Award	\$ 5,000.00
<i>Net Settlement Amount</i>	\$ 287,680.09

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

12. Sufficient information existed to allow Class Counsel to intelligently value this case. Given the parties' arms' length bargaining facilitated by a reputable and experienced wage and hour mediator, the exchange of informal discovery, the experience of Class Counsel, the fact that 99% of the Class elected to participate and no objections were submitted, the presumption of fairness is justified.

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

ADEQUACY OF COUNSEL AND

REASONABLENESS OF REQUESTED FEE AND COST AWARDS

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

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

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

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

2 16. It has been my experience that the benchmark for attorney fee awards in
3 California state cases is one-third of a common settlement fund, which the CA Supreme Court
4 upheld in the *Robert Half* case. Here, in accordance with the Settlement Agreement, Class
5 Counsel is seeking a fee of \$178,333.33, which is one-third of the Settlement Amount.

6 17. There are several additional factors why I believe that the Court should award
7 one-third of the common fund as reasonable attorneys' fees. First, Class Counsel's efforts
8 resulted in a common fund settlement amount of \$535,000, and the employees will receive
9 \$2,876.80 on average. This is a very good result in light of the disputed nature of the claims
10 alleged. This result was achieved by the work and success of my office, who negotiated the
11 settlement after extensive preparation, investigation, mediation, and substantial work thereafter.

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

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

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

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

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

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

6 23. At my office, this case was primarily handled by my senior associate attorney,
7 Peter Carlson, while I performed the role of the supervising attorney. As set forth in his
8 declaration, Mr. Carlson works exclusively with me on employment law matters and has been in
9 practice for 8 years. He bills at the hourly rate of \$575/hour. I have been in practice for 22
10 years, with most of those years handling complex litigation and for over the last 15 years, my
11 practice has almost entirely consisted of handling class action wage and hour matters. My billing
12 rate is \$775/hour. I believe these rates are consistent with Plaintiff and Defense attorneys who
13 handle complex class action litigation, if not somewhat lower.

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

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

25. The table below includes a summary of the hours worked, plus an estimated 25 hours that I will bill in finalizing and filing the motion, preparing for and attending the approval hearing, and working with the claims administrator and defense counsel to finalize this matter. The total lodestar for my firm is approximately \$145,697.50 through the conclusion of this matter, as shown in the chart below:

Attorney/Timekeeper	Rate	Hours	Fee
Brian J. Mankin <i>Trial Counsel / Partner</i> (22 Years)	\$775	98²	\$75,950
Peter J. Carlson <i>Senior Associate</i> (8 Years)	\$575	160.2	\$92,115
Grand Total for All Attorneys			\$168,065

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

27. In the course of prosecuting this action, Class counsel have incurred expenses that were incidental and necessary to the effective representation of the Class. These expenses included but were not limited to: court filings, copying and management of documents, on-line Lexis research, messenger services, postage, fax transmission expenses, transportation, mediator fees including travel to mediation, and other incidental expenses directly related to this action. The Settlement Agreement provided up to \$15,000 in costs. Through final approval, my office incurred \$7,486.58 in litigation costs (see Exhibit “B” attached hereto). The saving will be placed in the Net Settlement Amount for payment to the Class Members. Defendant does not oppose this request for costs.

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

28. I also believe that the service award of \$5,000 for Plaintiff is fair and warranted for the reasons outlined in his declarations and in the motion. He came forward and worked directly with my office in analyzing the claims and documents, and providing valuable information. (See his declaration for supporting information.) Indeed, his participation was an essential element of Defendant's desire to mediate and of the pre and post mediation analysis that allowed Class Counsel to settle the case. Of course, he also took on various risks, including the risk that he could have been ordered to pay Defendant's costs if he lost and the risk of retaliation and being black-balled in the industry. Finally, Defendant does not oppose the requested service award.

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

30. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit “A.”

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

32. The LWDA's confirmation of receipt of this Motion and Declaration is attached hereto as Exhibit "C."

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

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

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

EXHIBIT “A”

Brian J. Mankin, Esq. [SBN 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [SBN 295611]
peter@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiff Juan Nieves and all others similarly situated

Maria C. Roberts, SBN 137907
mroberts@greeneroberts.com
Dessi N. Day, SBN 207699
dday@greeneroberts.com
GREENE & ROBERTS
402 West Broadway, Suite 1025
San Diego, CA 92101
Tel: (619) 398-3400 | Fax: (619) 330-4907

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
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 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

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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,

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

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

62. Class Representative expressly waives and relinquishes all rights and benefits 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,

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

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

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

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

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

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

108. Confidentiality and Public Comment. The Parties and attorneys will keep the terms of the settlement confidential until the filing of the motion for preliminary approval of the class settlement. Thereafter, the Parties agree to make no comments to the media or otherwise 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.

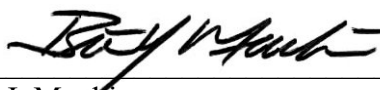
3 Dated: August ___, 2022

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
Peter J. Carlson
Attorneys for Plaintiff

11
12
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 _____
Dessi N. Day
Attorney for Defendant

22
23 Dated: August ___, 2022

DEFENDANT'S COUNSEL:
DUNBARMONROE, PLLC

24
25
26 _____
Clark Monroe
Attorney for Defendant

27
28
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
Peter J. Carlson
11 Attorneys for Plaintiff

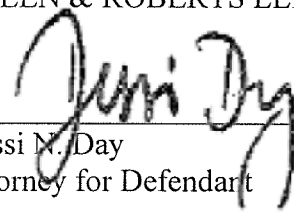
12
13 Dated: August 10, 2022

DEFENDANT:
KLLM TRANSPORT SERVICES, LLC

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

18 Dated: August 10, 2022

DEFENDANT'S COUNSEL:
GREEN & ROBERTS LLP

19
20
21 
22 Dessi N. Day
Attorney for Defendant

23 Dated: August 10, 2022

DEFENDANT'S COUNSEL:
DUNBARMONROE, PLLC

24
25 
26
27 Clark Monroe
Attorney for Defendant

28
END OF DOCUMENT

EXHIBIT “B”

All Expenses

Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00477 Nieves v KLLM, Inc.

Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Juan Manuel Nieves</u> <u>14000-00477 Nieves v KLLM, Inc.</u>									
12-20-2021	Approved		Non-Billable	E112 Court fees	Aguilera, Monica A	75.00	0.00	1.00	75.00
LWDA Case Number: LWDACM85847321 to submit PAGA letter									
12-28-2021	Approved		Non-Billable	E101 Copying	Aguilera, Monica A	0.20	0.00	26.00	5.20
26 copies for letters to employer									
01-04-2022	Approved		Non-Billable	E108 Postage	Aguilera, Monica A	8.66	0.00	1.00	8.66
Postage for the month of December 2021									
02-14-2022	Approved		Non-Billable	Attorney Service	Grossi, Tracie L.	103.25	0.00	1.00	103.25
Bosco Inv 6664442 Serve: KLLM Transport Services, LLC, a Texas Limited Liability Company Summons; Complaint; Civil Case Cover Sheet; Certificate of Assignment; ADR Court: San Bernardino County Superior Court - Central District									
02-22-2022	Approved		Non-Billable	E112 Court fees	Aguilera, Monica A	1,471.00	0.00	1.00	1,471.00
San Bernardino Superior Court to fax file complaint									
03-22-2022	Approved		Non-Billable	E112 Court fees	Grossi, Tracie L.	29.00	0.00	1.00	29.00
SDSC copies of docs - receipt numbers 2102755 and 2102759									
04-01-2022	Approved		Non-Billable	E125 Mediation fees	Grossi, Tracie L.	4,875.00	0.00	1.00	4,875.00
JAMS Inv#6127722 for mediation w Judge Jonathan Cannon									
05-02-2022	Approved		Non-Billable	Attorney Service	Grossi, Tracie L.	94.00	0.00	1.00	94.00
Courtcall ID#11507623 for 4-29-22 CMC									
07-01-2022	Approved		Non-Billable	E112 Court fees	Charito, Tracie	3.80	0.00	1.00	3.80
PACER fees 4/1/2022-6/30/2022									
08-01-2022	Approved		Non-Billable	E101 Copying	Charito, Tracie	0.06	0.00	12.00	0.72
12 copies @ .06 for Nlc of Change of Address									
08-19-2022	Approved		Non-Billable	Attorney Service	Charito, Tracie	220.00	0.00	1.00	220.00

All Expenses
Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00477 Nieves v KLLM, Inc.

Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Juan Manuel Nieves</u> <u>14000-00477 Nieves v KLLM, Inc.</u>									
Bosco Inv #7531447 File and conform. -Motion -Declaration -Proposed Order *Advance fees* Court: San Bernardino County Superior Court - Central District Completed on: 08/18/2022									
08-23-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	50.00	0.00	1.00	50.00
Bosco Inv #7538897 File and Conform: Supplemental Declaration Court: San Bernardino County Superior Court - Central District Completed on: 8/22/2022									
11-29-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	9.95	0.00	1.00	9.95
Receipt from TurboCourt - file Declarations for MPA									
11-29-2022	Approved		Non-Billable	E112 Court fees	Chiarito, Tracie	3.00	0.00	1.00	3.00
SBS C fees for copy of signed order on PA									
11-30-2022	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	94.00	0.00	1.00	94.00
Courtcall ID #11624342 for 11/29/22 MPA									
03-01-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	250.00	0.00	1.00	250.00
Estimated costs for Bosco to file Motion for Final Approval and supporting documents									
03-23-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	144.00	0.00	1.00	144.00
Estimated costs for Courtcall for 3/23/23 MFA									
03-23-2023	Approved		Non-Billable	E108 Postage	Chiarito, Tracie	50.00	0.00	1.00	50.00
Estimated costs for postage for March 2023									
Project Total									7,486.58
Client Total									7,486.58
Grand Total									7,486.58

EXHIBIT “C”