

1 Joshua H. Haffner, SBN 188652
jhh@haffnerlawyers.com

2 Vahan Mikayelyan, SBN 337023
vh@haffnerlawyers.com

3 **HAFFNER LAW PC**
15260 Ventura Blvd., Suite 1520
4 Sherman Oaks, California 91403
Telephone: (213) 514-5681
5 Facsimile: (213) 514-5682

6 Attorneys for Plaintiff and all others
similarly situated and Cross-Defendant
7 M&M Transportation LLC

8 Christopher C. McNatt, Jr., SBN 174559
cmcnatt@scopelitis.com

9 Youngki Sohn, SBN 283587
ysohn@scopelitis.com

10 **SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, LLP**
2 North Lake Avenue, Suite 560
11 Pasadena, California 91101
Tel: (626) 795-4700
12 Fax: (626) 795-4790

13 Attorneys for Defendant and Cross-Complainant,
14 Harbor Express, Inc.

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF LOS ANGELES**

17 JUAN M. MARTINEZ, an individual; on
behalf of himself and all others similarly
18 situated,

19 Plaintiffs,

20 v.

21 HARBOR EXPRESS, INC.; and DOES 1
through 10, inclusive,

22 Defendants.

23 _____
24 And Related Cross-Complaint
25
26
27
28

CASE NO. 22STCV12159

Complaint Filed: April 11, 2022
Assigned to Hon. Lawrence P. Riff

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
CLASS NOTICE**

1 This Class Action Settlement Agreement is entered into by and between Plaintiff, Juan
2 Milan Martinez (“Plaintiff”), individually and on behalf of all others similarly situated, and
3 Defendant Harbor Express, Inc., (“Defendant”, collectively as “the Parties”), and is approved by
4 their respective counsel of record, subject to the terms and conditions hereof and the Court’s
5 approval. The settlement memorialized in this Settlement Agreement is referred to hereinafter as
6 the “Settlement.”

7 **A. Definitions**

8 1. “Action” or “Lawsuit” means and refers to the case entitled *Martinez v. Harbor*
9 *Express, Inc.* Los Angeles County Superior Court Case No. 22STCV12159.

10 2. “Aggrieved Employee” means all current or former drivers for Defendant, who
11 were California residents at any time from April 11, 2021 through the date Notice is mailed to the
12 Class.

13 3. “Agreement” or “Settlement Agreement” shall mean this Class Action and PAGA
14 Settlement Agreement.

15 4. “Class” or “Settlement Class” means “all current or former drivers for Defendant,
16 who were California residents at any time from April 11, 2018 through the date Notice is mailed
17 to the Class.

18 5. “Class Counsel” refers to Joshua H. Haffner, Alfredo Torrijos and Vahan
19 Mikayelyan of Haffner Law P.C.

20 6. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment”
21 mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and
22 expenses, respectively, incurred to prosecute the Action.

23 7. “Class Data” means a complete list of all Settlement Class Members that Defendant
24 will diligently and in good faith compile from their records and provide to the Settlement
25 Administrator within fifteen (15) days after entry of the Preliminary Approval Order. The Class
26 Data shall be on one Excel spreadsheet and shall include the Settlement Class Members’ full
27 names; last known addresses; telephone numbers; Social Security Numbers; the total Weeks
28 Worked during the Class Period for each Settlement Class Member; and the total Weeks Worked

1 during the PAGA Period for each Aggrieved Employee. To protect Class Members' privacy
2 rights, the Settlement Administrator must maintain the Class Data in confidence, use the Class
3 Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class
4 Data to Settlement Administrator employees who need access to the Class Data to effect and
5 perform under this Agreement. Defendant has a continuing duty to immediately notify Class
6 Counsel if it discovers that the Class Data omitted class member identifying information and to
7 provide corrected or updated Class Data as soon as reasonably feasible.

8 8. "Class Member" or "Settlement Class Member" means a member of the Class, as
9 either a Participating Class Member or Non-Participating Class Member (including a Non-
10 Participating Class Member who qualifies as an Aggrieved Employee).

11 9. "Class Period" is deemed to be the periods between April 11, 2018 through the date
12 Notice is mailed to the Class.

13 10. "Class Representatives" or "Plaintiff" means and refers to Juan Milan Martinez, the
14 named Plaintiff in the operative Complaint in the Action seeking Court approval to serve as a
15 Class Representative.

16 11. "Complaint" refers to the complaint filed in this Action on April 11, 2022.

17 12. "Court" (or "Judge") means the California Superior Court, County of Los Angeles.

18 13. "Defendants" means and refers to Harbor Express, Inc.

19 14. "Defendant's Counsel" or "Defense Counsel" means and refers to Christopher C.
20 McNatt, Jr. and Youngki Sohn of Scopelitis, Garvin, Light, Hanson & Feary, LLP.

21 15. "Effective Date" means the date by when both of the following have occurred: (a)
22 the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the
23 Judgment is final. The Judgment is final as of the latest of the following occurrences: (i) if no
24 Class Member timely and properly intervenes or files a motion to vacate the judgment approving
25 the Settlement Agreement under Code of Civil Procedure § 663, the date the Court enters an order
26 granting Final Approval of the Settlement Agreement; (ii) if a Class Member intervenes or files a
27 motion to vacate the judgment approving the Settlement Agreement, thirty-five (35) calendar days
28 following the date the Court enters an order granting final approval, assuming no appeal is filed;

1 or (iii) if a Class Member intervenes or files a motion to vacate the judgment approving the
2 Settlement Agreement, and if a timely appeal is filed, the date of final resolution of that appeal
3 (including any requests for rehearing and/or petitions for *certiorari*), resulting in final judicial
4 approval of the Settlement Agreement.

5 16. “Final Approval” refers to the order of the Court granting final approval of this
6 Settlement Agreement.

7 17. “Final Approval Hearing” means the Court’s hearing on the Motion for Final
8 Approval of the Settlement.

9 18. “Final Judgment” shall have the meaning ascribed to it in Paragraph 15.

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

12 20. “Gross Settlement Amount” means Six Hundred Fifty-Five Thousand Dollars and
13 No Cents (\$655,000.00) which is the total amount Defendant agrees to pay under the Settlement
14 except as provided in Paragraph 82(a) below. The Gross Settlement Amount will be used to pay
15 Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class
16 Counsel Fees, Class Counsel Expenses, Class Representative Service Payment, and the
17 Administrator’s Expenses.

18 21. “Individual Class Payment” means the Participating Class Member’s pro rata share
19 of the Net Settlement Amount calculated according to the number of Workweeks Worked during
20 the Class Period.

21 22. “Individual Class Amount” shall have the meaning ascribed to it in Paragraph 59(d)
22 below.

23 23. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of
24 25% of the PAGA Penalties calculated according to the number of Workweeks Worked during the
25 PAGA Period.

26 24. “LWDA” means the California Labor and Workforce Development Agency, the
27 agency entitled, under Labor Code section 2699, subd. (i).

28 25. “LWDA PAGA Payment” means 75% of the PAGA Penalties paid to the LWDA

1 under Labor Code section 2699, subd. (i).

2 26. “Net Settlement Amount” means the Gross Settlement Amount, less the following
3 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
4 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
5 Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be
6 paid to Participating Class Members as Individual Class Payments. “Net Settlement Amount” shall
7 have the meaning ascribed to it in Paragraph 59(b) below.

8 27. “Notice” or “Class Notice” means the court approved notice of class action
9 settlement and hearing date for final court approval, to be mailed to Class Members in English
10 with a Spanish translation, in the form, without material variation, attached as Exhibit A and
11 incorporated by reference into this Agreement.

12 28. “Notice Response Deadline” is 45 calendar days from the date the Notice is mailed
13 to the Settlement Class Members.

14 29. “Non-Participating Class Member” means a Settlement Class Member who submits
15 a valid Request for Exclusion, pursuant to Paragraph 82(a) below.

16 30. “Objecting Settlement Class Member” means a Settlement Class Member, other
17 than Plaintiff, who submits a valid and timely objection to the terms of this Agreement, pursuant
18 to Paragraph 82(c) below.

19 31. “PAGA Member” means, collectively all persons who worked for Defendant.
20 within the appropriate PAGA Period.

21 32. “PAGA Period” is deemed to be the periods between April 11, 2021, through the
22 date notice is mailed to the Class.

23 33. “PAGA Notice” means Plaintiff’s letter to Defendant and the LWDA providing
24 notice pursuant to Labor Code section 2699.3, subd. (a).

25 34. “PAGA Settlement Amount” shall have the meaning ascribed to it in Paragraph
26 59(c) below.

27 35. “PAGA Weeks” for each PAGA Member means the number of weeks during the
28 applicable PAGA period for which the individual received a settlement statement.

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

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

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

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

16 40. “QSF” means the Qualified Settlement Fund set up by the Settlement Administrator
17 for the benefit of the Final Settlement Class, and from which the settlement payments shall be
18 made.

19 41. “Released Claims” means all known and unknown claims, losses, damages,
20 liquidated damages, demands, penalties, liabilities, declaratory relief, injunctive relief, interest
21 (whether pre- or post-judgment), disbursements, attorneys’ fees and costs, causes of action,
22 complaints or suits, at law or in equity, which arise from the facts asserted in the Complaint,
23 including, without limiting the foregoing, claims for misclassification of Class Members as
24 independent contractors, failure to pay minimum wage, failure to provide meal periods, failure to
25 provide rest periods, failure to reimburse for business expenses, failure to furnish timely, accurate,
26 and itemized wage statements, failure to pay all wages owed every pay period, failure to pay all
27 wages upon separation, claims made under California Labor Code sections 201, 202, 203, 204,
28 221, 223, 226, 226.3, 226.7, 226.8, 400 – 410, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 2802,

1 all similar provisions or requirements of the California Industrial Welfare Commission Wage
2 Order 9-2001 (including, but not limited to, sections 4, 11, and 12), California Labor Code Private
3 Attorney General Act section 2698 et seq. (including, but not limited to, sections 2699 and
4 2699.3), California Business and Professions Code sections 17200, et seq., This Agreement will
5 release all claims that were expressly alleged in the Action or that could have been alleged in the
6 Action based upon the factual and legal allegations in the Complaint.

7 If the Court approves the Settlement, each PAGA Member, regardless of whether
8 exclusion was requested, will release the right to pursue claims under the California Labor Code
9 Private Attorney General Act section 2698 et seq. (including, but not limited to, sections 2699 and
10 based on misclassification as an independent contractor, unpaid minimum wage, unpaid overtime
11 wages, failure to provide meal periods, failure to provide rest periods, failure to reimburse for
12 business expenses, failure to furnish timely, accurate, and itemized wage statements, failure to pay
13 all wages owed every pay period, and failure to pay all wages upon separation).

14 42. "Released Parties" means Defendant and its present and former officers, directors,
15 owners, shareholders, members, managers, agents, parent entities, subsidiaries, attorneys, insurers,
16 operators, partners, predecessors, successors, assignees, subsidiaries, and affiliates.

17 43. "Release Period" shall be the time period governing the Released Claims, which
18 shall be identical to the Class Period.

19 44. "Release" shall mean the release and discharge of the Released Claims by Plaintiff
20 and all of the Participating Class Members and PAGA Members, and their assignees, as set forth
21 in Sections D and E below.

22 45. "Request for Exclusion" shall have the meaning ascribed to it in Paragraph 82(a)
23 below.

24 46. "Service Payment" or "Service Award" means the amount approved by the Court
25 to be paid to the Class Representative Juan Milan Martinez for initiating the Action and providing
26 services in support of the Action.

27 47. "Settlement Administrator" means and refers to the third-party class action
28 settlement administrator that will be selected by the Parties based on mutual agreement, who will

1 provide the Notice to the Class Members and distribute the Settlement Amounts as described in
2 this Agreement. The Parties have selected CPT Group, Inc. as Settlement Administrator.

3 48. "Settlement Administration Costs" means the costs payable from the Gross
4 Settlement Amount to the Settlement Administrator for administering this Settlement, including,
5 but not limited to, printing, distributing, and tracking documents for this Settlement, distributing
6 the Settlement Amount, distributing the PAGA Settlement Amount, and providing necessary
7 reports and declarations, as requested by the Parties. The Settlement Administration Costs shall be
8 paid from the Gross Settlement Amount, including, if necessary, any such costs in excess of the
9 amount represented by the Settlement Administrator as being the maximum costs necessary to
10 administer the Settlement.

11 49. "Weeks Worked" (or "Work Weeks") for each Settlement Class Member means
12 the number of weeks during the applicable Class Period for which the Settlement Class Member
13 received a settlement statement.

14 **B. General Terms**

15 50. Plaintiff Juan Milan Martinez filed a class action complaint in the Court against
16 Defendant Harbor Express, Inc. on April 11, 2022, which alleged claims that he was misclassified
17 as an independent contractor and entitled to recovery for Defendant's (a) unlawful failure to pay
18 minimum wages (b) unlawful failure to provide meal periods, (c) unlawful failure to provide rest
19 periods, (d) failure to reimburse business expenses (e) failure to furnish timely and accurate wage
20 statements, (f) failure to pay all wages owed each pay period, (g) failure to pay all wages upon
21 separation; (h) violation of California's Unfair Competition Act. and (i) violation of Labor Code
22 section 2698 et seq.

23 51. Defendant denies Plaintiff's claims and allegations in the Complaint, denies any
24 failure to comply with the laws identified in the Complaint and denies any and all liability for the
25 causes of action alleged.

26 52. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written
27 notice to Defendant and the LWDA by sending the PAGA Notice.

28 53. The Class Representative believes he can proceed with his representative and class

1 claims, that the Action is meritorious, and that class certification is appropriate.

2 54. The Parties have conducted a thorough investigation into the facts of the Action.
3 This includes conducting an extensive exchange of informal and formal discovery, including
4 Defendant's written policies and practices and the production of a sampling of payment records
5 for Settlement Class Members. Class Counsel is both knowledgeable about and has done extensive
6 research with respect to the applicable law and potential defenses to the claims of the Settlement
7 Class. Class Counsel has diligently pursued an investigation of the Class Members' claims against
8 Defendant. Based on the foregoing data and on their own independent investigation and
9 evaluation, Class Counsel is of the opinion that the settlement with Defendant for the
10 consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and
11 adequate and is in the best interest of the Class Members in light of all known facts and
12 circumstances, including the risk of significant delay and uncertainty associated with litigation,
13 various defenses asserted by Defendant, and potential appellate issues. Plaintiff's investigation
14 was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.*,
15 48 Cal.App.4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc.*, 168 Cal.App.4th 116,
16 129-130 (2008) ("*Dunk/Kullar*").

17 55. On September 6, 2023, Plaintiff and Defendant participated in an all-day Zoom
18 mediation before a retired judge, Jan Adler, a highly experienced class action mediator, which led
19 to this Agreement to settle the Action.

20 56. The Parties agree that the Parties' Settlement, this Agreement, and any acts to be
21 performed or judgments to be entered pursuant to the terms of the Settlement and Agreement shall
22 not be construed as an admission by Defendant of any wrongdoing, violation of any statute or law,
23 or liability on the claims or allegations in the Action.

24 57. Stipulation for Class Certification. For settlement purposes only, Defendant will
25 stipulate that the Settlement Class Members described herein who do not request exclusion from
26 the Settlement Class may be conditionally certified as a settlement class. This stipulation to
27 certification is in no way an admission that class action certification is proper and shall not be
28 admissible in this or in any other action except for the sole purposes of enforcing this Agreement.

1 Should the Court fail to issue Final Approval for any reason, the Parties' stipulation to class
2 certification as part of the Settlement shall become null and void *ab initio* and shall have no
3 bearing on, and shall not be admissible in connection with, the issue of whether or not certification
4 would be appropriate in a non-settlement context. Defendant expressly reserves its rights and
5 declares that it will continue to oppose class certification and contest the substantive merits of the
6 case should the Court fail to issue Final Approval. Plaintiff expressly reserves his rights and
7 declare that he will continue to pursue class certification in those cases not already certified and to
8 proceed to trial should the Court fail to issue Final Approval.

9 58. The Parties, Class Counsel and Defense Counsel represent that they are not aware
10 of any other pending matter or action asserting claims that will be extinguished or affected by the
11 Settlement.

12 **C. Terms of Settlement**

13 59. The financial terms of the Settlement are as follows:

14 (a) Gross Settlement Amount. Except as otherwise provided by Paragraph
15 82(a) below, The Parties agree to settle this Action for Six Hundred Fifty-Five Thousand Dollars
16 and No Cents (\$655,000.00) ("the Settlement Amount"). The Settlement Amount is the maximum
17 amount that will be paid, and includes Individual Class Payments, Individual PAGA Payments,
18 the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative
19 Service Payment, and the Administrator's Expenses. The Settlement Administrator will make and
20 deduct the aforesaid payments from the Gross Settlement Amount, in the amounts specified by the
21 Court in the Final Approval. The Settlement Administrator will disburse the entire Gross
22 Settlement Amount without asking or requiring Participating Class Members or PAGA Members
23 to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert
24 to Defendant.

25 (b) Net Settlement Amount. The "Net Settlement Amount" is defined as the
26 Gross Settlement Amount, less the following payments in the amounts approved by the Court:
27 Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment,
28 Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration

1 Expenses Payment. The remainder is to be paid to Participating Class Members as Individual
2 Class Payments. In the event that the Court reduces Individual PAGA Payments, the LWDA
3 PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class
4 Counsel Litigation Expenses Payment, or the Administration Expenses Payment, the amount of
5 any such reduction shall be placed in the Net Settlement Amount and allocated to Participating
6 Class Members.

7 (c) PAGA Settlement Amounts for the PAGA Members (Individual PAGA
8 Payments). PAGA Penalties in the amount of \$25,000.00 to be paid from the Gross Settlement
9 Amount, with 75% (\$18,750.00) allocated to the LWDA PAGA Payment and 25% (\$6,250.00)
10 allocated to the Individual PAGA Payments. The Settlement Administrator will calculate each
11 Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of
12 PAGA Penalties (\$6,250.00) by the total number of PAGA Weeks worked by all Aggrieved
13 Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's
14 PAGA Weeks. There will be no deductions from the PAGA Settlement Amounts, as they
15 represent penalties and not wages. In addition, there can be no opt-outs, and a timely and valid
16 Request for Exclusion from the Settlement Class will not prevent or diminish a PAGA Members'
17 recovery under the PAGA Settlement Agreements. If the Court approves PAGA Penalties of less
18 than the amount requested, the Settlement Administrator will allocate the remainder to the Net
19 Settlement Amount. The Settlement Administrator will report the Individual PAGA Payments on
20 IRS 1099 Forms.

21 (d) Individual Settlement Amounts for the Final Settlement Class Members
22 (Individual Class Amount). The Individual Settlement Amount for each Participating Class
23 Member will be calculated by the Settlement Administrator using the Class Data provided by
24 Defendant as follows. An Individual Class Payment calculated by (a) dividing the Net Settlement
25 Amount by the total number of Weeks Worked by all Participating Class Members during the
26 Class Period and (b) multiplying the result by each Participating Class Member's Weeks Worked.

27 (e) The Individual Settlement Payments are payments for all Released Claims.
28 The Parties agree that the Individual Settlement Payments constitute non-wage income and will be

1 reported to appropriate taxing authorities by the Settlement Administrator on individual IRS Form
2 1099. Each Participating Class Member, Class Counsel, and Class Representative payment
3 recipient will be solely responsible for remitting to state and federal taxing authorities any
4 applicable taxes which may be owed on the portion of any payment received pursuant to this
5 Settlement Agreement. Class Members who may have questions about their tax liability, if any,
6 should consult independent tax counsel. Neither Class Counsel nor Defense Counsel will provide
7 any tax advice to Class Members.

8 (f) Effect of Non-Participating Class Members on Calculation of Individual Class
9 Payments. Non-Participating Class Members will not receive any Individual Class Payments. The
10 Settlement Administrator will retain amounts equal to their Individual Class Payments in the Net
11 Settlement Amount for distribution to Participating Class Members on a pro rata basis.

12 (g) Service Payment to Class Representative. The amount, if any, awarded to
13 the Class Representative as a Service Payment will be set by the Court in its discretion, not to
14 exceed \$20,000.00 (in addition to any Individual Class Payment and any Individual PAGA
15 Payment). Defendant will not oppose Plaintiff's request for a Class Representative Service
16 Payment that does not exceed this amount. The Service Payment to Plaintiff will be paid out of
17 the Gross Settlement Amount. The Class Representative will be bound by the Release as well as a
18 General Release, set forth below, in exchange for the Service Payment and will be issued an IRS
19 Form 1099 in connection with this payment. Plaintiff shall be solely and legally responsible to
20 pay any and all applicable taxes on the Service Payment. The Parties agree that any amount less
21 than the requested amount awarded as the Service Payment to Plaintiff shall not be a basis for
22 Class Counsel to void this Agreement. Should the Court approve a lesser amount for the Service
23 Payment, the difference shall be added to the Net Settlement Amount to be distributed to the
24 Participating Class Members.

25 (h) Attorneys' Fees and Costs. A Class Counsel Fees Payment of not more than
26 30%, which is currently estimated to be \$196,500.00 and a Class Counsel Litigation Expenses
27 Payment of not more than \$10,000.00. Defendant will not oppose requests for these payments
28 provided that do not exceed these amounts. Should the Court approve a lesser amount than what

1 is sought by Class Counsel, the difference shall be added to the Net Settlement Amount to be
2 distributed to the Participating Class Members. Any Court order awarding less than the amount
3 sought by Class Counsel shall not be grounds to rescind the Settlement Agreement or otherwise
4 void the Settlement. The Settlement Administrator will pay the Class Counsel Fees Payment and
5 Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full
6 responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class
7 Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant,
8 from any dispute or controversy regarding any division or sharing of any of these Payments.

9 (i) Settlement Administration Costs. A Settlement Administrator Expenses
10 Payment not to exceed \$15,000.00 except for a showing of good cause and as approved by the
11 Court. To the extent the Administration Expenses are less or the Court approves payment less than
12 \$15,000.00, the Settlement Administrator will retain the remainder in the Net Settlement Amount.

13 (j) Tax Liability. Class Counsel and Defendant make no representations as to
14 the tax treatment or legal effect of payments called for hereunder, and Plaintiff and the Settlement
15 Class Members are not relying on any statement or representation by Class Counsel or Defendant
16 in this regard. Plaintiff and Participating Class Members understand and agree that they will be
17 solely responsible for the payment of any taxes and penalties assessed on their respective
18 payments described herein that are recorded on a Form 1099, which will be distributed by the
19 Settlement Administrator at times and in the manner required by the Internal Revenue Code of
20 1986 (the "Code") and consistent with this Agreement. If the Code, the regulations promulgated
21 thereunder, or other applicable tax law, is changed after the date of this Agreement, the processes
22 set forth in this Section may be modified in a manner to bring Defendant into compliance with any
23 such changes.

24 (k) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS AGREEMENT
25 (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH
26 PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN
27 "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
28 AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR

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

20 60. "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under
21 no circumstances will any portion of the Settlement Amount revert to Defendant. Participating
22 Class Members will not have to make a claim in order to receive an Individual Settlement
23 Amount. Distributions, in the form of Individual Settlement Amounts, will be made directly to
24 each Participating Class Member. Any unclaimed funds in the Settlement Administrator's account
25 as a result of a failure to timely cash a settlement check shall be handled by the Settlement
26 Administrator and be issued to the cy pres recipient in accordance with Paragraph 86.

27 61. Class Size. Defendant represents that there are approximately 186 drivers during
28 the Class Period. Defendant has represented that the Class consists of a total of approximately

1 20,077 Weeks Worked during the Class Period and 6,404 PAGA Weeks during the PAGA Period.

2 62. Class Counsel and Plaintiff believe that the Settlement is fair and reasonable and
3 will so represent same to the Court by providing a sufficient *Dunk/Kullar* analysis.

4 **D. Release by the Settlement Class**

5 63. Effective on the date when Defendant fully funds the entire Gross Settlement
6 Amount, Plaintiff, Class Members, and Class Counsel will release claims against all Released
7 Parties. In exchange for the consideration recited in this Settlement Agreement, all Participating
8 Class Members, on behalf of themselves and on behalf of their current, former, and future heirs,
9 executors, administrators, attorneys, agents, and assigns, do hereby and fully forever, irrevocably,
10 and unconditionally release, waive, acquit, and discharge the Released Parties from the Released
11 Claims - all claims that were alleged, or reasonably could have been alleged, based on the Class
12 Period facts stated in the Complaint and ascertained in the course of the Action - as of the
13 Effective Settlement Date.

14 64. In addition, if the Court approves the Settlement, each PAGA Member, regardless
15 of whether exclusion was requested, will release the right to pursue claims under the California
16 Labor Code Private Attorney General Act section 2698 et seq. (including, but not limited to,
17 sections 2699 to 2699.5 based on misclassification as an independent contractor, minimum wage,
18 overtime premiums, reimbursements, unlawful deductions, wage statements, meal periods, rest
19 periods, timely payment of wages, and final payment of wages).

20 65. Each Participating Class Member and PAGA Member will be deemed to have
21 made the foregoing Release as if by manually signing it. The Participating Class Members and
22 PAGA Members are deemed by operation of the Order Granting Final Approval to have agreed
23 not to sue or otherwise make a claim against any of the Released Parties for any Released Claims.

24 66. Plaintiff and Defendant intend that the Settlement described in this Agreement will
25 release and preclude any further claim, whether by lawsuit, administrative claim or action,
26 arbitration, demand, or other action of any kind, by each and all of the Participating Class
27 Members to obtain a recovery based on and arising out of Released Claims. The Class Members
28 and PAGA Members shall be so notified in the Notice. This paragraph does not apply to any

1 Class Member who timely and validly opts out of the Settlement. However, PAGA claims for the
2 PAGA Period will still be released by any PAGA Members who opt-out of the Settlement Class.

3 67. All Non-Participating Class Members who are Aggrieved Employees are deemed
4 to release, on behalf of themselves and their respective former and present representatives, agents,
5 attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for
6 PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA
7 Period facts stated in the Complaint, the PAGA Notice, and ascertained in the course of the
8 Action, including but not limited to, (a) any and all claims involving the alleged misclassification
9 as independent contractors; (b) any and all claims involving any alleged failure to pay minimum
10 wage; (c) any and all claims involving any alleged failure to provide meal periods; (d) any and all
11 claims involving any alleged failure to provide rest periods; (e) any and all claims involving any
12 alleged failure to reimburse business expenses; (f) any and all claims involving any alleged failure
13 to furnish timely and accurate wage statements; (g) any and all claims involving any alleged
14 failure to pay all wages owed every pay period; (h) any and all claims involving any alleged
15 failure to pay all wages upon separation; (i) any and all claims involving any alleged violation of
16 California's unfair competition Act; (j) any and all claims involving any alleged violation of Labor
17 Code section 2698 et seq.; and all similar provisions or requirements of the California Industrial
18 Welfare Commission Wage Order 9-2001 (including, but not limited to, sections 4, 7, 11, 12).

19 68. The Class Representative, on behalf of himself and the Settlement Class and PAGA
20 Members, acknowledges and agrees that (a) any and all claims involving the alleged
21 misclassification as independent contractors; (b) any and all claims involving any alleged failure
22 to pay minimum wage; (c) any and all claims involving any alleged failure to provide meal
23 periods; (d) any and all claims involving any alleged failure to provide rest periods; (e) any and all
24 claims involving any alleged failure to reimburse business expenses; (f) any and all claims
25 involving any alleged failure to furnish timely and accurate wage statements; (g) any and all
26 claims involving any alleged failure to pay all wages owed every pay period; (h) any and all
27 claims involving any alleged failure to pay all wages upon separation; (i) any and all claims
28 involving any alleged violation of California's unfair competition Act; (j) any and all claims

1 involving any alleged violation of Labor Code section 2698 et seq.; and all similar provisions or
2 requirements of the California Industrial Welfare Commission Wage Order 9-2001 (including, but
3 not limited to, sections 4, 7, 11, 12), in the Action, are disputed, and that the payments set forth
4 herein constitute payment of all sums allegedly due to them and the Settlement Class and PAGA
5 Members. The Class Representatives, on behalf of themselves and the Settlement Class and
6 PAGA Members, acknowledge and agree that California Labor Code Section 206.5 is not
7 applicable to the Parties hereto. Section 206.5 provides in pertinent part as follows:

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

12 **E. Release by Class Representatives**

13 69. Effective on the date when Defendant fully funds the entire Gross Settlement
14 Amount, Plaintiff, Class Members, and Class Counsel will release claims against all Released
15 Parties. As a material inducement to Defendant to enter into this Settlement Agreement, the Class
16 Representatives, upon the occurrence of the Effective Date, for themselves and for their respective
17 spouses, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees,
18 conservators, guardians, personal representatives, and assigns, forever and completely release and
19 discharge the Released Parties from any and all charges, complaints, claims, liabilities,
20 obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights,
21 demands, costs, losses, debts, and expenses (including back wages, statutory penalties, civil
22 penalties, liquidated damages, exemplary damages, interest, attorneys' fees, and costs) of any
23 nature whatsoever, from the beginning of time through the execution of this Agreement, whether
24 known or unknown, suspected or unsuspected, including but not limited to all claims arising out
25 of, based upon, or relating to the Class Representative's work for Defendant, classification of
26 worker status or the remuneration for or termination of such relationship (collectively, the "Class
27 Representative's Claims").

28 70. Without limiting the generality of the foregoing, the Class Representative expressly

1 releases all claims or rights against Released Parties arising out of or relating to alleged violations
2 of any contracts, express or implied (including but not limited to any contract of employment);
3 any contract or covenant of good faith and fair dealing (express or implied); any tort, including
4 any claim for improper or noncompliant worker classification, improper or unauthorized wage
5 deductions, failure to pay the applicable wages, unpaid wages, penalties, liquidated damages, other
6 damages, overtime, and alleged “off the clock” work under California Labor Code Sections 204
7 and 558, waiting time penalties pursuant to California Labor Section 203, damages or penalties
8 pursuant to California Labor Code Section 226, meal period and rest break payments and penalties
9 pursuant to California Labor Code Sections 226.7 and 512, failure to provide itemized wage
10 statements pursuant to California Labor Code Section 226, statutory or civil penalties pursuant to
11 California Labor Code Sections 210, failure to indemnify for business expenses pursuant to Labor
12 Code section 2802, willful misclassification pursuant to California Labor Code section 226.8,
13 unfair competition and unfair business practices pursuant to Business and Professions Code
14 Section 17200 *et seq.*, interest and costs pursuant to California Civil Code Section 3287 and
15 California Labor Code Section 218.6, statutory or common law rights to attorneys’ fees and costs,
16 including those pursuant to California Labor Code Section 1194 *et seq.*; claims under the Private
17 Attorneys General Act of 2004, Labor Code section 2699 *et seq.*, and the alleged violation or
18 breach of any other state or federal statute, rule and or regulation; including all applicable
19 Industrial Welfare Commission Wage Orders, and all similar causes of action, including but not
20 limited to, any claim for restitution, equitable relief, interest, penalties, costs or attorneys’ fees in
21 connection with any of the foregoing,

22 71. Plaintiff’s Waiver of Rights Under California Civil Code Section 1542. For
23 purposes of Plaintiff’s Release, Plaintiff expressly waives and relinquishes the provisions, rights,
24 and benefits, if any, of section 1542 of the California Civil Code, which reads:

25 A general release does not extend to claims that the creditor or releasing party does
26 not know or suspect to exist in his or her favor at the time of executing the release,
27 and that if known by him or her would have materially affected his or her
28 settlement with the debtor or Released Party.

1 **F. Stay of Litigation**

2 72. The Parties agree that upon the execution of this Agreement the litigation shall be
3 stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the
4 signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case
5 to trial under CCP section 583.310 for the entire period of this settlement process.

6 **G. Notice Process**

7 73. Appointment of Settlement Administrator. The Parties have agreed on the
8 appointment of CPT Group, Inc. to serve as the Settlement Administrator and have verified that,
9 as a condition of appointment, CPT Group, Inc. agrees to be bound by this Agreement and to
10 perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of
11 Administration expenses. CPT Group, Inc. will perform the duties of a settlement administrator,
12 including mailing the Notice, using standard devices to obtain forwarding addresses,
13 independently reviewing and verifying documentation associated with any claims or opt-out
14 requests, resolving any disputes regarding the calculation or application of the formula for
15 determining the Individual Settlement Amounts, drafting and mailing the settlement checks to
16 Participating Class Members, issuing 1099 Tax Forms, and performing such other tasks as set
17 forth herein or as the Parties mutually agree or that the Court orders. The Parties and their Counsel
18 represent that they have no interest or relationship, financial or otherwise, with the Settlement
19 Administrator other than a professional relationship arising out of prior experiences administering
20 settlements.

21 74. Employer Identification Number. The Settlement Administrator shall have and use
22 its own Employer Identification Number for purposes of providing reports state and federal tax
23 authorities.

24 75. Qualified Settlement Fund. The Administrator shall establish a settlement fund that
25 meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation
26 section 468B-1.

27 76. Disputes Regarding Settlement Administration. Any and all disputes relating to
28 administration of the Settlement by the Settlement Administrator (except for disputes regarding

1 Class Data or individual Settlement Class Member/PAGA Member payments) shall be referred to
2 the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of
3 this Settlement Agreement, until Plaintiff and Defendant notify the Court that all payments and
4 obligations contemplated by this Settlement Agreement have been fully carried out. Prior to
5 presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the
6 dispute without the necessity of Court intervention. The Court will not hear disputes regarding the
7 Class Data or Settlement Class Member payments. Any disputes relating to Class Data or
8 Settlement Class Member Payments shall be submitted to the Settlement Administrator for final
9 resolution after consultation with both Plaintiff's and Defendant's counsel. The Settlement
10 Administrator shall also be responsible for issuing to Plaintiff, Settlement Class Members, and
11 Class Counsel IRS Tax Form 1099 as may be required by law for all amounts paid pursuant to this
12 Agreement. The Settlement Administrator shall also be responsible for setting up all necessary tax
13 accounts and forwarding all penalties to the appropriate government authorities.

14 77. Class Data. Within fifteen (15) days after entry of the Preliminary Approval Order,
15 Defendant shall provide to the Settlement Administrator on one spreadsheet a list of all Settlement
16 Class Members and PAGA Members, including the Class Members'/PAGA Members' full names,
17 last known addresses, telephone numbers, social security numbers, and the total Weeks Worked
18 by each Class Member during the Class Period or PAGA Member during the PAGA Period. The
19 Settlement Administrator will run a check of the Class Members'/PAGA Members' addresses
20 against those on file with the U.S. Postal Service's National Change of Address List. The Class
21 Data provided to the Settlement Administrator will remain confidential and will not be used or
22 disclosed to anyone, except as required by applicable tax authorities, pursuant to Defendant's
23 express written consent, or by order of the Court.

24 78. Notice. The Notice, as approved by the Court, shall be sent by the Settlement
25 Administrator to the Settlement Class Members/PAGA Members, by first class mail, in English
26 and Spanish, within ten (10) calendar days following the Settlement Administrator's receipt of the
27 Class Data. Before mailing Class Notices, the Administrator shall update Class Member addresses
28 using the National Change of Address database. The Settlement Administrator shall use standard

1 devices, including a skip trace, to obtain forwarding addresses of Settlement Class Members if any
2 envelopes are returned.

3 79. Returned Notices. The Settlement Administrator will take reasonable steps to
4 ensure that the Notice is received by all Settlement Class Members/PAGA Members, including
5 utilization of the National Change of Address Database maintained by the United States Postal
6 Service to review the accuracy of Settlement Class Member/PAGA Members mailing addresses
7 and, if possible, to update a mailing address. If an address cannot be found in this way, the
8 Settlement Administrator shall perform a skip-trace search to attempt to locate a new address. If
9 the Settlement Administrator learns of a failed mailing and obtains an updated address for that
10 mailing, Notices will be re-mailed to that Class Member within ten (10) calendar days of the
11 receipt of the updated address. The Notice shall be identical to the original Notice, except that it
12 shall notify the Class Member that the exclusion (opt-out) request or objection must be returned by
13 the later of the Notice Response Deadline or fifteen (15) days after the postmark date of the re-
14 mailed Notice.

15 80. Disputes Regarding Class Data. Class Members are deemed to participate in the
16 Settlement, unless they opt-out. PAGA Members are deemed to participate in the Settlement, as
17 they cannot opt-out. The Notice will inform each Class Member of his/her estimated Individual
18 Settlement Amount and the number of weeks he/she worked during the Class Period. The Notice
19 will also inform each PAGA Member of his/her estimated PAGA Amount and the number of
20 weeks he/she worked during the PAGA Period, if any. Class Members/PAGA Members may
21 dispute their Weeks Worked if they feel they worked more weeks for Defendant during the Class
22 Period or PAGA Period than the Defendant's records show by timely submitting evidence to the
23 Settlement Administrator. Defendant's records will be presumed determinative absent reliable
24 evidence to rebut the records, but the Settlement Administrator will evaluate any evidence
25 submitted by a Class Member/PAGA Member and provide the evidence submitted to Class
26 Counsel and Defense Counsel who agree to meet and confer in good faith about the evidence to
27 determine the Class Member's actual number of workweeks and estimated Individual Settlement
28 Amount/PAGA Settlement Amount. If Class Counsel and Defense Counsel are unable to agree,

1 they agree to submit the dispute to the Settlement Administrator to render a final decision. Class
2 Members will have until the Notice Response Deadline to dispute Weeks Worked, object, or opt
3 out, unless that deadline is extended by the Court. PAGA Members will have until the Notice
4 Response Deadline to dispute PAGA Weeks, unless that deadline is extended by the Court.

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

8 82. Settlement Class Members' Rights. Each Settlement Class Member will be fully
9 advised of the Settlement, the ability to object to the settlement, and the ability to opt-out or
10 request exclusion from the Settlement. The Notice will inform the Settlement Class Members of
11 the Court-established deadlines for filing objections or requesting exclusion from the Settlement in
12 accordance with the following guidelines:

13 (a) Requests for Exclusion from Settlement Class. Any Settlement Class
14 Member, other than Plaintiff, may request to be excluded from the Settlement Class by submitting
15 a "Request for Exclusion" to the Settlement Administrator via mail, fax, email, or other electronic
16 means, and received or postmarked on or before the Notice Response Deadline (Exclusion form is
17 attached hereto as Exhibit A).

18 Any Request for Exclusion should include the full name, address, telephone number, and
19 signature of the Settlement Class Member requesting exclusion. The Request for Exclusion must
20 be returned by mail, fax, email, or other electronic means to the Settlement Administrator at the
21 specified contact information. Any such Request must be made in accordance with the terms set
22 forth in the Notice. A Request for Exclusion will be timely only if received or postmarked by the
23 Notice Response Deadline, unless the Parties otherwise agree in writing. Any Settlement Class
24 Member who timely requests exclusion in compliance with these requirements: (i) will not have
25 any rights under this Agreement, including the right to object, appeal or comment on the
26 Settlement; (ii) will not be entitled to receive any payments under this Agreement; and (iii) will
27 not be bound by this Agreement, or the Judgment. The Parties to this agreement and their counsel
28 agree that they will not solicit or encourage Class Members to opt-out or object to this Agreement.

1 In the event more than 10% of the Settlement Class Members (calculated based on the
2 number of Weeks Worked by such members with Defendant) opt out of the Settlement, Defendant
3 shall be entitled to elect to receive a pro-rata reduction in the Gross Settlement Amount based on
4 the Weeks Worked by such Non-Participating Class Members in the Class Period. In the event
5 that more than 15% of the Settlement Class Members (calculated based on the number of Weeks
6 Worked by such members with Defendant) opt out of the Settlement, Defendant shall either: (a) be
7 entitled to elect to receive a pro-rata reduction in the Gross Settlement Amount based on the
8 Weeks Worked by such Non-Participating Class Members in the Class Period; or (b) be entitled to
9 void the Settlement. If Defendant elects to receive a pro-rata reduction in the Settlement Amount,
10 Plaintiff will be entitled to elect to void the Settlement.

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

18 (c) Objections to Settlement. Only Participating Class Members may object to
19 the class action components of the Settlement and/or this Agreement, including contesting the
20 fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class
21 Counsel Litigation Expenses Payment and/or Class Representative Service Payment. Non-
22 Participating Class Members have no right to object to any of the class action components of the
23 Settlement. To object, a Participating Class Member may inform the Settlement Administrator, in
24 writing, via mail, fax, email, or other electronic means, of his or her objection which must be
25 received or postmarked by the Notice Response Deadline at the contact information set forth in the
26 Notice. Such objection should include the full name, address, telephone number, and dates of
27 work with Defendant of the Objecting Settlement Class Member; the case name and number; the
28 basis for the objection, including any legal support and each specific reason in support of the

1 objection, as well as any documentation or evidence in support thereof; and, if the Objecting
2 Settlement Class Member is represented by counsel, the name and address of his or her counsel. If
3 any Objecting Settlement Class Member wishes to speak at the Final Approval Hearing, the class
4 member, or his or her attorney, may attend the final approval hearing and be heard by the court.
5 The Settlement Administrator shall provide objections, if any, to Class Counsel and Defense
6 Counsel via email within three (3) days of receipt, and the Settlement Administrator shall attach
7 any objections to its declaration of due diligence, which is to be filed with the Court prior to the
8 Final Approval Hearing. Any Participating Class Member who files an objection remains eligible
9 to receive monetary compensation from the Settlement. Plaintiff and Defendant shall not be
10 responsible for any fees, costs, or expenses incurred by any Class Member and/or his or her
11 counsel related to any objections to the Settlement. Submitting an objection does not preserve the
12 right to appeal a final judgment.

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

22 (e) Responses to Objections. Each Party retains the right to respond to any
23 objection raised by a Participating Class Member, including the right to file responsive documents
24 in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise
25 ordered or accepted by the Court.

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

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

3 84. Funding of the Settlement Amount. Defendant shall fully fund the Gross
4 Settlement Amount by transmitting the funds to the Settlement Administrator no later than
5 fourteen (14) days after the Effective Date. The Settlement Administrator shall deposit the Gross
6 Settlement Amount into an interest-bearing qualified settlement account (“Qualified Settlement
7 Fund”) with an FDIC insured banking institution from which the Settlement Administrator will
8 have authority to distribute money in accordance with the terms of this Settlement Agreement. The
9 interest accrued during this time period will be distributed to Participating Class Members. In the
10 event this Settlement Agreement becomes null and void, all monies deposited by Defendant into
11 the Qualified Settlement Fund including any interest accrued, shall be returned to Defendant.

12 85. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
13 settlement amount into the QSF, the Settlement Administrator will mail the payments to the
14 Participating Class Members and PAGA Members, the payment for the attorneys’ fees and costs
15 to Class Counsel, any Service Payment to the Class Representative, the payment to the LWDA for
16 PAGA penalties, and will pay itself the Settlement Administration Costs.

17 86. Deadline for Cashing Settlement Checks. Participating Class Members and PAGA
18 Members shall have 180 calendar days after mailing by the Settlement Administrator to cash their
19 settlement checks. The expiration period of each settlement check shall be stated in each
20 distribution to the Class. Prior to mailing the checks, the Settlement Administrator shall update
21 the addresses using the National Change of Address Database. If any Participating Class
22 Member’s/PAGA Member’s check is not cashed within that 180-day period, the check will be
23 void and a stop-payment will be issued. At that time the Settlement Administrator will void any
24 such uncashed or unclaimed checks and all amounts from such unclaimed checks will be retained
25 in the QSF. The Settlement Administrator will take reasonable additional steps to locate such
26 persons for a period of up to forty-five (45) days after the expiration date of such checks. Pursuant
27 to Code of Civil Procedure, section 384, the Parties shall report to the court the total amount that
28 was actually paid to the Participating Class Members and PAGA Members. After this report is

received, the court will amend the judgment to direct the Settlement Administrator to pay the sum of unclaimed portion plus any interest that has accrued thereon, to the General Services fund of the Legal Aid Foundation of Los Angeles, a nonprofit organization providing civil legal services to the indigent. After the court's judgment under Code of Civil Procedure, section 384, the Settlement Administrator will transmit or cause to transmit the sum of unclaimed portion plus any interest that has accrued thereon to the General Services funds of the Legal Aid Foundation of Los Angeles. In such event, the Participating Class Members and PAGA Members will nevertheless remain bound by this Settlement Agreement, including the release of the Released Claims. Defendant's monetary obligations under this Settlement Agreement are limited to the Gross Settlement Amount. The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient [General Services fund of the Legal Aid Foundation of Los Angeles].

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

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

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

(b) Approving as to form and content the proposed Notice, attached hereto as Exhibit A;

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

(d) Preliminarily approving this Settlement;

(e) Preliminarily appointing Haffner Law PC as class counsel and;

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

88. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and

1 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or
2 by telephone, and in good faith, to resolve the disagreement. If the Court does not grant
3 Preliminary Approval or conditions Preliminary Approval on any material change to this
4 Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the
5 Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and
6 otherwise satisfy the Court's concerns.

7 89. Not later than sixteen (16) court days before the calendared Final Approval
8 Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a
9 request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed
10 Final Approval Order and a proposed Judgment (collectively "Motion for Final Approval").
11 Plaintiff shall provide drafts of these documents to Defense Counsel not later than seven days
12 prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will
13 expeditiously meet and confer in person or by telephone, and in good faith, to resolve any
14 disagreements concerning the Motion for Final Approval.

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

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

18 (a) Approving the Settlement, adjudging the terms thereof to be fair, reasonable and
19 adequate, and directing consummation of its terms and provisions as expressed in this Settlement
20 Agreement;

21 (b) Approving Class Counsel's application for an award of attorneys' fees and
22 reimbursement of litigation costs and expenses, the Service Payment to the Class Representative,
23 and the payment to the Settlement Administrator for costs of administering the settlement,
24 consistent with the terms and provisions herein; and

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

1 **J. Voiding the Agreement**

2 91. If the Court fails or refuses to issue the Final Approval Order or fails to approve
3 any material condition of this Settlement Agreement which effects a fundamental change of the
4 Settlement, the entire Settlement Agreement shall be rendered voidable and unenforceable as to all
5 Parties herein at the option of any Party.

6 92. If the Settlement is voided or fails for any reason, Plaintiff and Defendant will have
7 no further obligations under the Settlement, including any obligation by Defendant to pay the
8 Settlement Amount, or any amounts that otherwise would have been owed under this Settlement
9 Agreement.

10 93. If the Settlement is voided or fails for any reason, any costs incurred by the
11 Settlement Administrator shall be borne equally on a 50-50 basis by Plaintiff and Defendant.

12 **K. Other Terms**

13 94. Defendant/Cross-Complaint's cross-complaint against M&M Transportation, LLC
14 shall be dismissed upon Final Approval and Final Judgment of the Action with the Parties. The
15 parties to the cross-complaint shall bear their own fees and costs.

16 95. Continuing Jurisdiction of the Court. The Parties agree that, after entry of
17 Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for
18 purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
19 administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

20 96. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
21 conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class
22 Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their
23 respective counsel, and all Participating Class Members who did not object to the Settlement as
24 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to
25 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for
26 new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of
27 the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the
28 Parties' obligations to perform under this Agreement will be suspended until such time as the

1 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
2 the amount of the Net Settlement Amount.

3 97. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the
4 reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material
5 modification of this Agreement (including, but not limited to, the scope of release to be granted by
6 Class Members), this Agreement shall be null and void. The Parties shall nevertheless
7 expeditiously work together in good faith to address the appellate court's concerns and to obtain
8 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration
9 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify
10 the Court's award of the Class Representative Service Payment or any payments to Class Counsel
11 shall not constitute a material modification of the Judgment within the meaning of this paragraph,
12 as long as the Gross Settlement Amount remains unchanged.

13 98. Amended Judgement. If any amended judgment is required under Code of Civil
14 Procedure section 384, the Parties will work together in good faith to jointly submit and a
15 proposed amended judgment.

16 99. Waiver. The waiver by one Party of any breach of this Agreement by another Party
17 shall not be deemed a waiver of any other prior or subsequent breach of this Agreement by any
18 Party.

19 100. Parties' Authority. The signatories hereto represent that they are fully authorized to
20 enter into this Settlement Agreement and bind their respective Parties hereto to the terms and
21 conditions hereof.

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

1 Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and
2 Defendant's counsel, take all necessary steps to secure the Court's preliminary and final approval
3 of the settlement, and the final entry of judgment.

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

8 103. No Admission. This Agreement represents a compromise and settlement of highly
9 disputed claims. Nothing in this Agreement is intended or should be construed as an admission by
10 Defendant that any of the allegations in the operative Complaint have merit or that Defendant has
11 any liability for any claims asserted; nor should it be intended or construed as an admission by
12 Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class
13 certification and representative treatment is for purposes of this Settlement only. If, for any reason
14 the Court does not grant Preliminary Approval, Final Approval or enter Judgment, Defendant
15 reserves the right to contest certification of any class for any reasons, and Defendant reserves all
16 available defenses to the claims in the Action, and Plaintiff reserves the right to move for class
17 certification on any grounds available and to contest Defendant's defenses. The Settlement, this
18 Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be
19 admissible in connection with, any litigation (except for proceedings to enforce or effectuate the
20 Settlement and this Agreement).

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

1 Evidence 408, be inadmissible as evidence in any proceeding, except an action or proceeding to
2 approve the Settlement, and/or interpret or enforce this Settlement Agreement. The stipulation for
3 class certification as part of this Settlement Agreement is for settlement purposes only and if for
4 any reason the settlement is not approved, the stipulation will be of no force or effect.

5 105. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant
6 and Defense Counsel separately agree that, until the Motion for Preliminary Approval of
7 Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause
8 or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement
9 directly or indirectly, specifically or generally, to any person, corporation, association, government
10 agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom
11 will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the
12 extent necessary to report income to appropriate taxing authorities; (4) in response to a court order
13 or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government
14 agency. Each Party agrees to immediately notify each other Party of any judicial or agency order,
15 inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and Defense
16 Counsel separately agree not to, directly or indirectly, initiate any conversation or other
17 communication, before the filing of the Motion for Preliminary Approval, any with third party
18 regarding this Agreement or the matters giving rise to this Agreement except to respond only that
19 "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's
20 communications with Class Members in accordance with Class Counsel's ethical obligations owed
21 to Class Members.

22 106. No Solicitation. The Parties separately agree that they and their respective counsel
23 and employees will not solicit any Class Member to opt out of or object to the Settlement, or
24 appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's
25 ability to communicate with Class Members in accordance with Class Counsel's ethical
26 obligations owed to Class Members.

27 107. Integrated Agreement. Upon execution by all Parties and their counsel, this
28 Agreement together with its attached exhibits shall constitute the entire agreement between the

1 Parties relating to the Settlement, superseding any and all oral representations, warranties,
2 covenants, or inducements made to or by any Party.

3 108. Attorney Authorization. Class Counsel and Defense Counsel separately warrant
4 and represent that they are authorized by Plaintiff and Defendant, respectively, to take all
5 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to
6 effectuate its terms, and to execute any other documents reasonably required to effectuate the
7 terms of this Agreement including any amendments to this Agreement.

8 109. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel
9 are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be
10 relied upon as such within the meaning of United States Treasury Department Circular 230 (31
11 CFR Part 10, as amended) or otherwise.

12 110. Modification of Agreement. This Agreement, and all parts of it, may be amended,
13 modified, changed, or waived only by an express written instrument signed by all Parties or their
14 representatives, and approved by the Court.

15 111. Agreement Binding on Successors. This Agreement will be binding upon, and inure
16 to the benefit of, the successors of each of the Parties.

17 112. Applicable Law. All terms and conditions of this Agreement and its exhibits will be
18 governed by and interpreted according to the internal laws of the state of California, without
19 regard to conflict of law principles.

20 113. Cooperation in Drafting. The Parties have cooperated in the drafting and
21 preparation of this Agreement. This Agreement will not be construed against any Party on the
22 basis that the Party was the drafter or participated in the drafting.

23 114. Confidentiality. To the extent permitted by law, all agreements made, and orders
24 entered during Action and in this Agreement relating to the confidentiality of information shall
25 survive the execution of this Agreement.

26 115. Use and Return of Class Data. Information provided to Class Counsel pursuant to
27 Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel
28 by Defendant in connection with the mediation, other settlement negotiations, or in connection

1 with the Settlement, may be used only with respect to this Settlement, and no other purpose, and
2 may not be used in any way that violates any existing contractual agreement, statute, or rule of
3 court. Not later than 90 days after the date when the Court discharges the Administrator's
4 obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff
5 shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior
6 to the Court's discharge of the Settlement Administrator's obligation, Defendant makes a written
7 request to Class Counsel for the return, rather than the destruction, of Class Data.

8 116. Headings. The descriptive heading of any section or paragraph of this Agreement is
9 inserted for convenience of reference only and does not constitute a part of this Agreement.

10 117. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement
11 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
12 weekend or federal legal holiday, such date or deadline shall be on the first business day
13 thereafter.

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

18 To the Settlement Class:

19 Joshua H. Haffner
20 jhh@haffnewlawyers.com
21 Alfredo Torrijos,
22 at@haffnerlawyers.com
23 Vahan Mikayelyan
24 vh@haffnerlawyers.com
25 Haffner Law PC
26 445 South Figueroa Street, Suite 2625
27 Los Angeles, CA 90071
28 Tel.: (213) 514-5681 / Fax.: (213) 514-5682

 To Defendant:

 Christopher C. McNatt, Jr.
 cmcnatt@scopelitis.com
 Youngki Sohn
 ysohn@scopelitis.com
 Scopelitis, Garvin, Light, Hanson & Feary, LLP

2 North Lake Avenue, Suite 560
Pasadena, California 91101
Tel: (626) 795-4700 / Fax: (626) 795-4790

119. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

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

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

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

123. 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.

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

Dated: April 10, 2024

CLASS REPRESENTATIVE:

Juan Milan Martinez

Juan Milan Martinez (Apr 10, 2024 18:27 PDT)

Juan Milan Martinez

Dated: April 11, 2024

CLASS COUNSEL:
HAFFNER LAW PC

Joshua H. Haffner
Alfredo Torrijos
Vahan Mikayelyan
Attorneys for Plaintiff
And similarly situated drivers

Dated: April __, 2024

Harbor Express, Inc.:

Dated: April __, 2024

**COUNSEL FOR DEFENDANT AND CROSS
COMPLAINANT**
SCOPELITIS, GARVIN, LIGHT,
HANSON & FEARY, LLP

Christopher C. McNatt, Jr.
Youngki Sohn
Attorneys for Defendant

1 the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
2 successors and assigns.

3 124. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
4 because the Settlement Class Members/PAGA Members are numerous, it is impossible or
5 impractical to have each of them execute this Settlement Agreement. The Notice will advise all
6 Settlement Class Members and PAGA Members of the binding nature of the release provided
7 herein and such Release shall have the same force and effect as if this Settlement Agreement were
8 executed by each Settlement Class Member/PAGA Member.

9 Dated: April 10, 2024

CLASS REPRESENTATIVE:

10 Juan Milan Martinez
11 Juan Milan Martinez (Apr 10, 2024 18:27 PDT)
12 Juan Milan Martinez

13 Dated: April 11, 2024

CLASS COUNSEL:
HAFFNER LAW PC

14 [Signature]
15 Joshua M. Haffner
16 Alfredo Tomijos
17 Vahan Mikayelyan
18 Attorneys for Plaintiff
And similarly situated drivers

19 Dated: April 11, 2024

Harbor Express, Inc.:

20 [Signature]
21 Sub. C. Inc.

22 Dated: April 11, 2024

23 COUNSEL FOR DEFENDANT AND CROSS
24 COMPLAINANT
SCOPELITIS, GARVIN, LIGHT,
25 HANSON & FEARY, LLP

26 [Signature]
27 Christopher C. McNatt, Jr.
Youngki Sohn
28 Attorneys for Defendant

EXHIBIT A

EXHIBIT A TO STIPULATION AND AGREEMENT
FOR CLASS ACTION SETTLEMENT

*Juan M. Martinez, on behalf of himself and others current and former employees similarly situated v.
Harbor Express, Inc. Case No. 22STCV12159 (Cal. Sup. Ct.)*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

JUAN M. MARTINEZ, an individual; on behalf of himself and all others similarly situated,	)	Case No. 22STCV12159
	)	
Plaintiffs,	)	NOTICE OF PENDENCY OF CLASS
	)	ACTION AND PROPOSED SETTLEMENT
v.	)	
	)	
HARBOR EXPRESS, INC.; and DOES 1 through 10, inclusive,	)	
	)	
	)	
Defendants.	)	
	)	
	)	
	)	
	)	

To: All current and former drivers who worked with HARBOR EXPRESS, INC. (“Harbor Express”) who were California residents and were classified as “independent contractors,” at any time from April 11, 2018 through [Date of Preliminary Approval] (the “Class Period”) (the described persons are “Settlement Class” or “Class Members”).

**PLEASE READ THIS NOTICE CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

Why should you read this notice?

The Court has granted preliminary approval of a proposed class action settlement (the “Settlement”) in *Juan Martinez, on behalf of himself and others current and former employees similarly situated v. Harbor Express, Inc.*, Los Angeles Superior Court Case No. 22STCV12159 (the “Lawsuit”). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

You may be entitled to money from this Settlement. Harbor Express’s records show that you worked with Harbor Express as a driver at some point between April 11, 2018 and [Date of Preliminary Approval]. The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment. If you ask to be excluded, you will not get any Settlement payment based on your eligibility to be in the Settlement class, and you cannot object to the settlement.

EXHIBIT A TO STIPULATION AND AGREEMENT
FOR CLASS ACTION SETTLEMENT

*Juan M. Martinez, on behalf of himself and others current and former employees similarly situated v.
Harbor Express, Inc. Case No. 22STCV12159 (Cal. Sup. Ct.)*

What is this case about?

Plaintiff Juan Martinez (the named “Plaintiff”) brought this Lawsuit against Harbor Express, Inc. (“Defendant”), seeking to assert claims on behalf of a “settlement class” of drivers who worked with Harbor Express. Plaintiff is known as the “Class Representative,” and his attorneys, who also represent the interests of all Class Members, are known as “Class Counsel.”

Plaintiff’s operative Complaint asserted the following causes of action on top of misclassification of employees: (1) unpaid minimum wages; (2) failure to reimburse business expenses; (3) failure to furnish timely and accurate wage statements; (4) failure to pay all wages owed every pay period; (5) failure to pay all wages upon separation; (6) violation of the Business and Professions Code § 17200 et seq.; and (7) violation of the Private Attorneys General Act (“PAGA”).

The lawsuit is about whether Defendants failed to properly pay Plaintiffs and other truck drivers whom Defendants classified as independent contractors. The Plaintiffs allege that the truck drivers should have been classified as employees and were not properly compensated for all compensable time worked, such as time spent loading and unloading, performing pre- and post-trip inspections, refueling, waiting, etc., among other wage and hour violations. Plaintiffs claim they should have been compensated for all the time spent working, but they were only paid for productive time, i.e., time spent advancing the load. Finally, Plaintiffs claim that they and other drivers did not receive reimbursement for work-related expenses. Plaintiffs seek actual damages as well as civil and statutory penalties for the alleged wage and hour violations under California law, including liquidated damages, double damages, and attorneys’ fees and costs.

Defendant denies that it has done anything wrong. Defendant further denies that it owes Class Members any wages, restitution, penalties, or other damages. Defendant strongly believes that the drivers who worked with Harbor Express have always been properly classified as independent Owner Operators. The Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Defendant, which expressly denies all liability. The Court has not ruled on the merits of Plaintiff’s claims. However, to avoid additional expense, attorney’s fees, costs, inconvenience, and interference with the business operations, Defendant has made the decision that it is in the best interests of all parties to settle the Lawsuit on the terms summarized in this Notice. The Court has only determined that there is sufficient evidence to suggest that the proposed Settlement might be fair, adequate and reasonable. A final determination on whether the Settlement is fair, adequate and reasonable will be made at the Final Approval hearing.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Defendant, Defendant’s current financial condition, the inherent risks of trial on the merits, and the delays and uncertainties associated with litigation.

Who are the Attorneys?

Attorneys for Plaintiff/Class Members: HAFFNER LAW P.C. Joshua H. Haffner Alfredo Torrijos Vahan Mikayelyan 445 South Figueroa Street, Suite 2625 Los Angeles, California 90071 Telephone: (213) 514-5681 Facsimile: (213) 514-5682	Attorneys for Defendants: SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, LLP Christopher C. McNatt, Jr. 2 North Lake Avenue, Suite 560 Pasadena, CA 91101 Telephone: (626) 795-4700 Facsimile: (626) 795-4790
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EXHIBIT A TO STIPULATION AND AGREEMENT
FOR CLASS ACTION SETTLEMENT

*Juan M. Martinez, on behalf of himself and others current and former employees similarly situated v.
Harbor Express, Inc. Case No. 22STCV12159 (Cal. Sup. Ct.)*

What are the core terms of the Settlement?

On [Date of Preliminary Approval], the Court preliminarily certified, for settlement purposes only, all current and former drivers who worked with Harbor Express who were California residents and were classified as “independent contractors,” at any time from April 11, 2018 through [Date of Preliminary Approval].

If you ask to be excluded, you will not get any Settlement payment based on your eligibility to be in the Settlement class, and you cannot object to the settlement. Class Members who do not exclude themselves from the Settlement pursuant to the procedures set forth in this Notice will be automatically bound by the Settlement and will release their claims against Defendants as described below (referred to as “Settlement Class Members”). All individuals who worked from April 11, 2021 through [Date of Preliminary Approval] (referred to as “PAGA Members”) will be entitled to a payment and will release their right to pursue a Labor Code Private Attorney General Act (aka a “PAGA” claim) regardless of whether they request exclusion.

Harbor Express has agreed to pay \$655,000.00 (the “Gross Settlement Amount”) to fully resolve all claims in the Lawsuit, including payments to Settlement Class Members, Class Counsel’s award and costs, administration costs, payment to the LWDA, payment to PAGA Members, and the Class Representative award. The Gross Settlement Fund will be paid out as described in Paragraph 81(a) of this Settlement Agreement.

The following deductions from the Gross Settlement Fund will be requested by the parties:

- Administrator Costs. The Court has approved CPT Group, Inc. to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement Agreement. The Parties will request up to \$15,000.00 from the Gross Settlement Fund to pay the administration costs.
- Class Counsel Award and Costs. Class Counsel have been prosecuting the Lawsuit on behalf of the Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Gross Settlement Fund. Class Members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees not to exceed 30% of the Gross Settlement Amount, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement of up to \$10,000.00 for verified costs Class Counsel incurred in connection with the Lawsuit.
- Enhancement Award. Class Counsel also intends to make a motion for an Enhancement award to the Class Representative in the amount of Twenty Thousand Dollars and Zero Cents (\$20,000.00). Such Enhancement award, subject to Court approval, is to compensate this individual for the time and expense he incurred in acting as the intermediary between Class Counsel and the Class, assisting Class Counsel in investigating and obtaining evidence, responding to discovery, providing testimony by way of declarations, and participating in mediation. The Enhancement award is also meant to compensate this individual for the significant risks he took in choosing to actively participate in the prosecution of this Class Action.
- PAGA Payment to the State of California. The parties have agreed to allocate \$25,000.00 towards the Settlement of the PAGA claims in the Lawsuit. \$18,750.00 will be paid to the State of California Labor and Workforce Development Agency, representing its 75% share of the civil penalties. The remaining \$6250.00 will be allocated to PAGA Members.

Calculation of Settlement Class Members’ Individual Settlement Payments. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Qualified Settlement Fund (“QSF”), which will be distributed to all Class Members who do not submit a valid and timely Request for Exclusion form (described below) and who do not appear at the Final Approval Hearing to request exclusion. Each Class Member who worked

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as a driver with Harbor Express from April 11, 2018 through [Date of Preliminary Approval] will be entitled to a Settlement Payment based on the proportionate number of work weeks the Class Member worked as a driver with Harbor Express during the time period of April 11, 2018 through [Date of Preliminary Approval].

Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Individual Class Payments will be mailed to all Settlement Class Members who did not submit a valid and timely Request for Exclusion or appear at the Final Approval Hearing to object.

Deadline to cash the checks: You will have 180 calendar days after mailing by the Settlement Administrator to cash your settlement check.

“Non-Reversionary” Settlement. This is a “non-reversionary” settlement. Under no circumstances will any portion of the Settlement Amount revert to Defendant. Any unclaimed funds in the Settlement Administrator's account as a result of a failure to timely cash a settlement check shall be handled by the Settlement Administrator and be issued to the Cy Pres recipient [General Services fund of the Legal Aid Foundation of Los Angeles].

Payments to PAGA Members. If the Court grants final approval of the Settlement, PAGA Payments will be mailed to all PAGA Members regardless of whether they request exclusion. The payment to PAGA Members will consist of a pro rata share of the \$6,250.00 portion of the \$25,000.00 PAGA allocation. The pro rata share will be based on the number of work weeks each individual worked between April 11, 2021 and the [Date of Preliminary Approval] compared to the total number of work weeks worked by all PAGA Members during the same time period.

Allocation and Taxes. For tax purposes, each Settlement Payment will be treated as follows: any portion paid from the PAGA allocation will be deemed a settlement for statutory penalties; all other payments will be designated 50% to settlement of claims for reimbursable expenses and interest; and 50% to settlement of claims for statutory penalties. An IRS form 1099 will be issued for these payments. Settlement Class Members are responsible for the proper tax treatment of the Settlement Payments. The Administrator, Defendant and its counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class Members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement and when Harbor Express fully funds Gross Settlement Amount, each Class Member who has not submitted a valid Request for Exclusion, will fully release and discharge Defendant and its parents, predecessors, successors, subsidiaries, affiliates, related companies, brother and/or sister companies, divisions, joint venturers, assigns, any entities deemed a client employer or labor contractor of Defendant under Labor Code section 2810.3, service providers, insurers, consultants, subcontractors, any individual or entity deemed a statutory employer or joint employers (under any legal theory of joint employment) and all respective agents, employees, officers, directors, stockholders, shareholders, owners, fiduciaries, insurers, consultants, subcontractors, and attorneys thereof (collectively the “Released Parties”) from the following “Released Claims” for the entire Class Period:

Released Claims” means all known and unknown claims, losses, damages, liquidated damages, demands, penalties, liabilities, declaratory relief, injunctive relief, interest (whether pre- or post-judgment), disbursements, attorneys’ fees and costs, causes of action, complaints or suits, at law or in equity, which arise from the facts asserted in the Complaint, including, without limiting the foregoing, claims for misclassification of Class Members as independent contractors, failure to pay minimum wage, , failure to reimburse for business expenses, failure to furnish timely, accurate, and itemized wage statements, failure to pay all wages owed every pay period, failure to pay all wages upon separation, claims made under California Labor Code sections 201, 202, 203, 204, 221, 223, 226, 226.3, 226.7, 226.8, 400 – 410, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 2802, all similar provisions or requirements of the California Industrial Welfare Commission Wage Order 9-2001 (including, but not limited to, sections 4, 11, and 12), California Labor Code Private Attorney General Act section 2698 et seq. (including, but not limited to, sections 2699 and 2699.3), California Business and Professions Code sections 17200, et seq.,. This Agreement will release all

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claims that were expressly alleged in the Action or that could have been alleged in the Action based upon the factual and legal allegations in the Complaint.

If the Court approves the Settlement, each PAGA Member, regardless of whether exclusion was requested, will release the right to pursue claims under the California Labor Code Private Attorney General Act section 2698 *et seq.* (including, but not limited to, sections 2699 and 2699.3 based on misclassification as an independent contractor, unpaid minimum wage, unpaid overtime wages, failure to provide meal periods, failure to provide rest periods, failure to reimburse for business expenses, failure to furnish timely, accurate, and itemized wage statements, failure to pay all wages owed every pay period, and failure to pay all wages upon separation).

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

You may also visit <<URL for custom website>> to view the Settlement Agreement, Notice of Pendency of Class Action, Request for Exclusion, or Final Judgment.

How much can I expect to receive from the Settlement?

The amount of money you are entitled to receive from this settlement (your “Individual Settlement Payment”) is based on the number of Work Weeks that you worked with Harbor Express during the Class Period. The amount of your Individual Settlement Payment and how it was calculated are set forth in the Notice of Estimated Individual Settlement Payment which accompanies this Notice. You may also be entitled to receive a portion of the PAGA Penalties awarded in this action (your “Individual PAGA Payment.”) If you are entitled to an Individual PAGA Payment, the amount of your Individual PAGA Payment and how it was calculated are also set forth in the Notice of Estimated Individual Settlement Payment.

Dispute Information in this Notice of Settlement.

Your award is based on the number of work weeks you worked with Harbor Express as a driver during the Class Period. The information contained in Harbor Express’s records regarding each of these factors, along with your estimated Individual Settlement Payment, is listed above. If you disagree with the information listed above, you may submit a dispute, along with any supporting documentation, to <<ADMINISTRATOR CONTACT INFO>>. Any disputes, along with supporting documentation, must be postmarked no later than <<RESPONSE DEADLINE>>. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties will investigate any dispute in consultation with the Settlement Administrator. The Settlement Administrator will make the final determination regarding the amount of your Individual Settlement Payment.

What are my options going forward?

1. Participate in the Settlement – Do Nothing

Remain part of the case and receive approximately the payment amount identified above **for the Settlement Class and, if applicable, PAGA Class.** You do not need to file a claim in order to receive a payment from the Settlement. Under the settlement, if you **do nothing, you will automatically receive Individual Settlement Payments**, as described above. After final approval by the Court, the payment will be mailed to you at the same address as this Class Notice. If your address has changed, please notify the Settlement Administrator as explained below.

2. Opt Out of the Settlement

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Get no Class Member payment. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator executed signed Request for Exclusion Form postmarked no later than **<<RESPONSE DEADLINE>>**, with your name, address, telephone number, last four digits of your social security number or full federal tax i.d. number, your signature, and the date.

Send the Request for Exclusion Form directly to the Administrator at **<<INSERT ADMINISTRATOR CONTACT INFO>>**. Any person who submits a timely Request for Exclusion Form shall, upon receipt by the Administrator, no longer be a Settlement Class Member, shall be barred from participating in any portion of the Settlement, and shall receive no benefits from the Settlement except the PAGA portion as described immediately below.

If the Court approves the Settlement, PAGA Class Members will be subject to a release of PAGA claims and will be entitled to a portion of the allocation of PAGA penalties regardless of whether exclusion is requested.

You may also appear at the Final Approval Hearing to object.

3. Object to the Settlement

You also have the right to object to the terms of the Settlement. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement in writing, or any portion of it, you may mail a written objection to the Settlement Administrator at **<<INSERT ADMINISTRATOR CONTACT INFO>>**. Your written objection must include your name, the last four digits of your social security number or full federal tax i.d. number, and the basis for your objection. You may also include any evidence in support of your objection. Written objections must be postmarked on or before **<<RESPONSE DEADLINE>>**.

You may also object by appearing at the Final Approval Hearing scheduled for **[Date of Final Approval Hearing]**, at **[Time]**, in Department 1 of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, California 90012. You have the right to appear either in person or through your own attorney at this hearing, although you do not need to appear at the Final Approval Hearing for your objection to be considered.

If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class members who do not object.

4. Speak at the Final Approval Hearing

You may also appear at the Final Approval Hearing to object and give your reasons for objecting as to why the Court should not approve the Settlement.

What is the next step?

The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on **[Date of Final Approval Hearing]**, at **[Time]**, in Department 7 of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, California 90012. Please contact **[INSERT]** or Class Counsel for updates regarding the location of the Final Approval Hearing as the location of the Final Approval Hearing is subject to change. You may also visit **<<URL for custom website>>** to check for updates to the Final Approval Hearing date, time, or location.

The Court also will be asked to rule on Class Counsel's request for attorneys' fees and reimbursement of documented costs and expenses and the Enhancement Awards to the Class Representative. The Final Approval Hearing may be postponed without further notice to Settlement Class Members. **You are not required to attend the Final Approval Hearing, although any Settlement Class Member is welcome to attend the hearing.**

How can I get additional information?

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FOR CLASS ACTION SETTLEMENT

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This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's files and the Settlement Agreement at the Office of the Clerk of the Los Angeles County Superior Court, located at 312 N. Spring Street, Los Angeles, California 90012, during regular court hours. You may also contact Class Counsel using the contact information listed above for more information.

You may also visit <<URL for custom website>> to view the Settlement Agreement, Notice of Pendency of Class Action, Request for Exclusion, or Final Judgment.

**PLEASE DO NOT CALL OR WRITE THE COURT, DEFENDANTS, OR THEIR ATTORNEYS FOR
INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS**

When will I get my payment?

The settlement payments will be distributed only if the Court approves the Settlement. The Court will hold a Fairness Hearing on [Date], 2024 to decide whether to approve the Settlement. Even if the Court approves the Settlement, however, there may still be appeals of that approval order that will take additional time to resolve, which can last for more than a year. Please be patient, as the claims administration process takes time.

Your Individual Settlement Payment will be paid to you within twenty-four (24) days after the Effective Date. The Effective Date is the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (i) if no Class Member timely and properly intervenes or files a motion to vacate the judgment approving the Settlement Agreement under Code of Civil Procedure § 663, the date the Court enters an order granting Final Approval of the Settlement Agreement; (ii) if a Class Member intervenes or files a motion to vacate the judgment approving the Settlement Agreement, thirty-five (35) calendar days following the date the Court enters an order granting final approval, assuming no appeal is filed; or (iii) if a Class Member intervenes or files a motion to vacate the judgment approving the Settlement Agreement, and if a timely appeal is filed, the date of final resolution of that appeal (including any requests for rehearing and/or petitions for certiorari), resulting in final judicial approval of the Settlement Agreement.

In the event this Notice is returned to the administrator as undeliverable, the Claims Administrator shall conduct an in-depth search under which it shall promptly attempt to determine the correct address using a skip-trace or other search using the name, address, and/or social security number of the Class Member involved and shall then re-mail the returned check.

In the instance that the Class Member's Notice Packet is re-mailed, that Class Member's Objection/Exclusion/Dispute Deadline Date shall be recalculated so that Class Member shall have an additional fifteen (15) calendar days from the original Objection/Exclusion/Dispute Deadline to opt-out, object, or dispute the number of work weeks attributed to him or her.

REMINDER AS TO TIME LIMITS

Please submit a Request for Exclusion, Dispute or written Objection by <<RESPONSE DEADLINE>> or appear at the Final Approval Hearing.

Once again, if you want to receive your Individual Settlement Payment you do not have to submit any further paperwork.

BY ORDER OF THE COURT ENTERED ON [Date of Preliminary Order].

NOTICE OF ESTIMATED INDIVIDUAL SETTLEMENT PAYMENT

Juan M. Martinez, on behalf of himself and others current and former employees similarly situated v. Harbor Express, Inc.

LOS ANGELES SUPERIOR COURT CASE NO. 22STCV12159 (Cal. Sup. Ct.)

List Any Corrections

Name/Address Changes (if any):

First Last

c/o

Address1 Address2

City, State, Zip, Country

(_____) _____
Area Code Telephone Number

(_____) _____
Area Code Telephone Number

Defendant Harbor Express, Inc.'s records show that you are a class member in the above-captioned case, in that you performed services as a driver for Harbor Express, Inc. in California at any time between April 11, 2018 and [insert date of preliminary approval] (the "Class Period"). As a class member, you are entitled to a share of the settlement in the case (your "Individual Settlement Payment").

Based on Harbor Express, Inc.'s records, during the Class Period you worked [] Work Weeks, which is defined as the total number of weeks during which a class member personally provided transportation services for Harbor Express, Inc. during the Class Period. Based on your number of Work Weeks, your estimated individual settlement payment is \$ [].

[ONLY IF PAGA MEMBER]

Based on Harbor Express, Inc.'s records, you are also eligible to receive a portion of the money allocated to Private Attorney General Act ("PAGA") penalties because you worked during the PAGA claims period of April 11, 2021 and [insert date of preliminary approval] (hereafter, the "PAGA Period"). Harbor Express, Inc.'s records show that you worked [] PAGA Weeks during the PAGA Period. Based on your number of PAGA Weeks during the PAGA Period, your estimated share of the funds allocated to PAGA penalties is \$ [].

If you believe that the above information regarding your Work Weeks or PAGA Weeks is incorrect, you may send a challenge via letter to the Settlement Administrator, indicating what you believe to be the correct number of Work Weeks you worked during the Class Period or PAGA Weeks you worked during the PAGA Period and the dates you worked, to the following address:

[CPT Group, Inc.]
<Street Address>
<City State ZIP>

To be considered a valid dispute, you must sign your letter under penalty of perjury, include with the letter documents or other evidence that you believe supports your claim that Harbor Express, Inc.'s records are inaccurate, and ensure the letter is postmarked no later than [DATE].

EXHIBIT A TO STIPULATION AND AGREEMENT
FOR CLASS ACTION SETTLEMENT

Request for Exclusion

REQUEST FOR EXCLUSION | CASE NO. 22STCV12159

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

JUAN M. MARTINEZ, an individual; on
behalf of himself and all others similarly
situated,

PLAINTIFFS,

V.

HARBOR EXPRESS, INC.; AND DOES 1
through 10, inclusive,

DEFENDANTS.

And Related Cross-Complaint

Case No. 22STCV12159

CLASS ACTION

REQUEST FOR EXCLUSION

**IF YOU WANT TO BE INCLUDED IN THE CLASS & REPRESENTATIVE
ACTION SETTLEMENT DESCRIBED IN THE ACCOMPANYING NOTICE,
DO NOT FILL OUT THIS FORM.**

**IF YOU DO NOT WANT TO BE INCLUDED IN THE SETTLEMENT,
COMPLETE THIS FORM IN ITS ENTIRETY, SIGN THE FORM,
AND RETURN IT VIA FIRST CLASS MAIL TO THE ADDRESS BELOW WITH
A POSTMARK OF NO LATER THAN [DATE], 2022 (30 DAYS AFTER THE
CLASS NOTICE AND THIS FORM WERE MAILED).**

CPT Group, Inc.
50 Corporate Park
Irvine, California 92606

EXHIBIT A TO STIPULATION AND AGREEMENT
FOR CLASS ACTION SETTLEMENT

I hereby declare as follows:

On one or more occasions I worked with Harbor Express as a driver at some point between from April 11, 2018 through **[INSERT DATE OF PRELIMINARY APPROVAL]**.

I wish to be **excluded** from the Settling Class and I **do not** want to participate in the proposed settlement. I understand that by excluding myself, I will **not** receive any share of or payment from the proposed settlement.

Date: _____, 2024

(Signature)

(Typed or Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number, Including Area Code)