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

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

STARLA HAGON and MICHAEL
JESPERSEN, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiffs,

vs.

TRANSPORT CORPORATION OF
AMERICA, INC, a Minnesota
Corporation; ERIC ANSON, an individual;
MELINDA GREEN, an individual, and
DOES 1 through 20, inclusive;

Defendants.

Case No.: CIVSB2203409
*[Assigned to Hon. Jessica Morgan, Dept. S26,
for all purposes]*

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

Hearing

Date: April 5, 2024
Time: 8:30 a.m.
Dept.: S26

Complaint filed: February 14, 2022

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. Within our firm, I am a partner and manage the employment practice. I represent Plaintiffs Starla Hagon and Michael Jespersen in this action and I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiffs' Motion for Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

1 **COUNSEL’S EXPERIENCE**

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

6 3. I have handled well over 500 employee vs. employer litigation matters during my
7 23 years in practice. Over the last 16 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled over 250 class action and representative
10 action wage/hour cases, and have been appointed by the court as class counsel and have received
11 final court approval and judgment in over half of those actions to date, and anticipate receiving
12 final approval in many more of those in the future.

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

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

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

1 have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that
2 only 5% of lawyers receive.

3 **BRIEF SUMMARY OF THE SETTLEMENT**

4 7. Following a productive mediation session, Plaintiffs Starla Hagon and Michael
5 Jespersen and Defendants (collectively, the “Parties”) reached a settlement and approved a Class
6 Action Settlement Agreement and Release of Claims resolving the wage and hour claims of the
7 putative class (the “Settlement Agreement”).¹ The Settlement Agreement seeks to fully release
8 and discharge Defendants from the claims brought against them in this matter in exchange for
9 Defendants’ agreement to pay a Settlement Amount of \$515,000 on a non-reversionary, non-
10 claims made basis (each Class Member will receive his/her share of the Net Settlement Amount
11 without having to submit a claim form or taking action, except for those who opt-out). Plaintiffs
12 seek to represent a class of similarly situated individuals defined as: “all current and former truck
13 drivers who resided in California and who were employed by Defendant Transport Corporation
14 of America, Inc., at any time during the Class Period of February 14, 2018, through March 4,
15 2024.”

16 8. Under the terms of the Settlement Agreement, Defendants will not oppose Class
17 Counsel’s application for a reasonable award of attorneys’ fees not to exceed one-third of the
18 Settlement Amount, Class Counsel’s litigation expenses not to exceed \$20,000, Settlement
19 Administrator Costs of \$6,500, PAGA penalties of \$50,000 (of which \$37,500 or 75% will be
20 paid to the LWDA and the remaining \$12,500 or 25% will be paid pro-rata to the Aggrieved
21 Employees), and a Service Payment not to exceed \$7,500 for each Plaintiff. After subtracting
22 the agreed-upon deductions from the Settlement Amount, it is estimated that \$251,833.34 will be
23 available to the Class Members who do not opt-out of the settlement, as follows:

24 ///

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26 ///

27
28 ¹ Plaintiffs, who are over the road drivers, were unable to sign the Settlement Agreement at the time of filing, so I’m
attaching an unsigned copy of the Settlement Agreement as Exhibit “A,” and will file a supplemental declaration
prior to hearing with the fully signed agreement once it is obtained.

<i>Settlement Amount</i>	\$ 515,000.00
Attorneys' Fees (1/3)	\$ 171,666.66
Litigation Costs (not to exceed)	\$ 20,000.00
Administrator Costs	\$ 6,500.00
PAGA Penalties	\$ 50,000.00
Class Representative Service Awards	\$ 15,000.00
<i>Net Settlement Amount</i>	\$ 251,833.34

9. Assuming 200 Class Members, the average payment to each class member will be approximately \$1,259.16 (\$251,833.34 / 200). Of course, the actual payment will be calculated on a pro-rata basis according to the number of Weeks Worked by each Class Member. Assuming an estimated 17,500 Weeks Worked, each Workweek will have a value of approximately \$14.39 on average. In addition, the Aggrieved Employees (*i.e.*, individuals who worked during the PAGA Period of February 9, 2021, through March 4, 2024), will receive a pro rata share of the \$12,500 PAGA Penalties (accounting for 25% of the total \$50,000 allocation). Moreover, there are approximately 100 Aggrieved Employees who collectively worked approximately 10,000 Work Weeks during the PAGA Period.

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

PROCEDURAL BACKGROUND

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

12. After being retained by Plaintiffs, we sent a February 9, 2022, letter to Defendants requesting the production of their personnel file and timekeeping records in order to further

1 evaluate their wage and hour claims. That same day, we submitted a letter to the California
2 Labor Workforce Development Agency (the “LWDA”) for civil penalties under the Private
3 Attorney General Act of 2004 (the “PAGA”), which is attached hereto as **Exhibit C**.

4 13. On February 14, 2022, Plaintiffs filed a putative class and representative PAGA
5 action in the San Bernardino County Superior Court, alleging Class Claims and PAGA Claims,
6 including: (a) failure to pay minimum and regular wages, (b) failure to pay for nonproductive
7 time under Labor Code § 226.2, (c) failure to reimburse for business expenses, (d) failure to
8 timely pay final wages, and (e) failure to provide accurate itemized wage statements; (f) unfair
9 and unlawful competition, and (g) related PAGA claims.

10 14. Defendants retained counsel and began to vigorously defend the case, including
11 noting in the Joint CMC Statement “that discovery will demonstrate that it compensated putative
12 class members for all time they spent working. Defendants further contend that all of the putative
13 class’s reasonably necessary business expenses were reimbursed. And as a result, each of
14 Plaintiff’s derivative claims must fail.” Consequently, the Parties commenced written discovery.

15 15. However, after discussions amongst counsel, the Parties agreed to attend private
16 mediation to determine if the case could be resolved prior to a contested class certification
17 process discovery and. In preparation for the mediation, the Parties informally exchanged
18 documents and information that allowed both sides to calculate the potential damages and
19 evaluate potential risk, including policies and procedures pertaining to each claim alleged, and
20 statistics relating to the number of current and former employees, number of shifts, pay periods
21 worked and other things. In this regard, Defendants provided a random sampling of timekeeping
22 and payroll records of the Class Members. This robust sampling enabled both parties to take a
23 deep dive into the claims. Additionally, during this process, Plaintiffs and their counsel
24 analyzed, researched, and investigated the potential issues, including matters related to the
25 calculation of damages, trial, and appellate issues and risks.

26 16. The Parties mediated on December 20, 2023 with Mark LeHocky, an experienced
27 class action wage and hour mediator. At the conclusion of mediation, Mr. LeHocky issued a
28 mediator’s proposal, which was ultimately accepted by the Parties. The Parties memorialized the

1 terms of the settlement in a long-form Settlement Agreement. The Parties now seek the Court's
2 preliminary approval of the Settlement.

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

4 17. The settlement was the product of extensive arm's length negotiations, facilitated
5 by an experienced mediator. Though cordial and professional, the settlement negotiations were
6 adversarial and non-collusive in nature. The settlement reached is the product of substantial
7 effort by the parties and their counsel. Although we believed that there was a possibility of
8 certifying the claims, we recognized the potential risk, expense, and complexity posed by
9 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or
10 on the damages awarded, and/or on an appeal that can take several more years to litigate.

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

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

26 20. Based on my experience in other cases, including wage and hour matters, I
27 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
28 In this case, the recovery for each class member is reasonable, fair, and adequate, and a

1 settlement at this time is in the best interests of the class. The settlement provides each class
2 member with compensation for the alleged violations when viewed in relation to the costs and
3 risks inherent in obtaining class certification and proceeding to trial.

4 21. Plaintiffs' counsel, as well as Defendant's counsel, fully endorse the terms and
5 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

6 22. Of course, the settlement amount represents a compromise figure, taking into
7 account the various risks surrounding class certification and the merits of Defendants' asserted
8 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
9 members, with no reversion to Defendants.

10 **PLAINTIFFS' REQUESTED ENHANCEMENT PAYMENTS**

11 23. Plaintiffs seek an enhancement payment of \$7,500 each, which I believe is fair
12 and warranted given the time and effort they devoted to this case. Their efforts included
13 providing factual background for the Class and PAGA complaint; providing documents and
14 information about Defendants' compensation plan; participating in phone calls to discuss
15 litigation and settlement strategy; making themselves available throughout the litigation to assist
16 with analyzing the claims and defenses; helping Class Counsel prepare for the mediation; and
17 reviewing the settlement documents. The Class Representatives also assumed significant risk in
18 bringing this litigation—namely, had they lost, they could have been ordered to pay Defendants'
19 costs.

20 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE** 21 **REQUESTED FEES AND COSTS**

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

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

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

7 **SETTLEMENT ADMINISTRATOR**

8 27. The parties request that the Court appoint Phoenix Settlement Administrators to
9 serve as the Settlement Administrator. Phoenix is experienced in administering class action
10 settlements, and has provided a flat-fee proposal to administer this settlement for \$6,500.

11 **SUBMISSION TO THE LWDA**

12 28. Plaintiffs have concurrently submitted the settlement and the motion for
13 preliminary approval to the LWDA in accordance with Labor Code § 2699(l)(2). The proof of
14 submission is attached hereto as **Exhibit D**.

15 **EXHIBITS AND CONCLUSION**

16 29. A true and correct copy of the Settlement Agreement is attached as Exhibit A.
17 Plaintiffs, who are over the road drivers, were unable to sign the Settlement Agreement at the
18 time of filing, so I'm attaching an unsigned copy of the Settlement Agreement, and will file a
19 supplemental declaration prior to hearing with the fully signed agreement once it is obtained.

20 30. The proposed Class Notice is attached as Exhibit B.

21 31. The LWDA Notice letter is attached as Exhibit C.

22 32. The proof of submission to the LWDA is attached as Exhibit D.

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

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct. Executed on March 4, 2024, at Riverside, California.

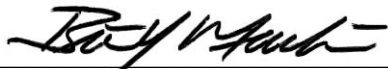
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EXHIBIT “A”

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Attorney for Defendants, Transport Corporation of America, Inc., Eric Anson and Melinda Green

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

STARLA HAGON and MICHAEL
JESPERSEN, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiffs,

vs.

TRANSPORT CORPORATION OF
AMERICA, INC, a Minnesota Corporation;
ERIC ANSON, an individual; MELINDA
GREEN, an individual, and DOES 1 through
20, inclusive;

Defendants.

Case No.: CIVSB2203409
*[Assigned to Hon. Jessica Morgan, Dept S26,
for all purposes]*

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

This Class Action and PAGA Settlement Agreement and Release of Claims is entered into by and between Plaintiffs Starla Hagon and Michael Jespersen, individually and on behalf of all others similarly situated and on behalf of the State of California, and Defendants Transport

Corporation of America, Inc., Eric Anson, and Melinda Green, and is approved by their respective counsel of record, subject to the terms and conditions hereof and the Court's approval.

A. Definitions

1. "Action" or "Lawsuit" means and refers to the case entitled *Hagon, et al. v. Transport Corporation of America, Inc., et al.*, San Bernardino County Superior Court, Case No. CIVSB2203409, which was commenced on February 14, 2022.

2. "Administrator" means and refers to Phoenix Settlement Administrators, the third-party class action settlement administrator agreed to by the Parties, and approved by the Court, that will provide the Notice to the Class Members and distribute the settlement amounts as described in this Agreement.

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

4. "Aggrieved Employee(s)" means all current and former truck drivers who, based on TCA's current records, had a primary residence in California and who were employed by TCA at any time during the PAGA Period.

5. "Agreement" or "Settlement Agreement" or "Settlement" shall mean this Class Action and PAGA Settlement Agreement and Release of Claims.

6. "Attorney's Fees and Cost Award" is the amount of attorney's fees and costs awarded by the Court to Class Counsel, which shall not exceed one-third of the Settlement Amount as attorneys fees or litigation costs of \$20,000.

7. "Class" is defined all current and former truck drivers who, based on TCA's current records, had a primary residence in California and who were employed by TCA at any

time during the Class Period.

8. “Class Member(s)” refers to individual members of the Class.

9. “Class Counsel” refers to Brian Mankin and Misty Lauby of Lauby, Mankin & Lauby LLP.

10. “Class Data” means a complete list that Defendants will diligently and in good faith compile from their records and provide to the Administrator on one spreadsheet which shall include, for each Class Member, the individual’s full name; last known address; Social Security Number; dates of employment; and total Weeks Worked during the PAGA Period and the Class Period.

11. “Class Period” is deemed to be any time during the period of February 14, 2018, through March 4, 2024.

12. “Class Representatives” or “Plaintiffs” means and refers to Plaintiffs Starla Hagon and Michael Jespersen.

13. “Complaint” refers to the operative class and PAGA representative action complaint on file in the Action.

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

15. “Defendants” refers collectively to Defendants Transport Corporation of America, Inc., Eric Anson, and Melinda Green.

16. “Defendants’ Counsel” or “Defense Counsel” means and refers to Scopelitis, Garvin, Light, Hanson & Feary, P.C.

17. “Effective Date” means 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: (a) if no Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1 18. “Escalator Clause:” Defendants represents that approximately 183 Class Members
2 worked a total of approximately 17,449 Work Weeks during the Class Period. If the actual
3 number of Work Weeks exceeds 17,449 by more than 10% (19,194 Work Weeks), at
4 Defendants’ option, either: (a) the Settlement Amount shall increase by the same number of
5 percentages points above 10% by which the actual number of Work Weeks exceeds the assumed
6 number (for example, if the actual number of Work Weeks is determined to be 12% higher than
7 the assumed number, the Settlement Amount shall be increased by 2%), or (b) the Class Period
8 and PAGA Period shall end as of the date the actual number of Work Weeks reached 19,194
9 Work Weeks, but under no circumstance shall the Class Period and/or PAGA Period end prior to
10 the mediation date (December 20, 2023).

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

14 20. “Individual Class Payment” refers to each Participating Class Members share of
15 the Net Settlement Amount, as further discussed in Paragraph 49(c) below.

16 21. “Individual PAGA Payment” refers to each Aggrieved Employees share of the
17 PAGA Penalties, as further discussed in Paragraph 49(c) below.

18 22. “Net Settlement Amount” is defined as the Settlement Amount less the Attorneys’
19 Fees and Costs Award, the Service Payment to the Class Representative as awarded by the
20 Court, the Administration Costs, and PAGA Penalties.

21 23. “Notice” means the notice of proposed class settlement that will be sent to the
22 Class Members and which will advise each Class Member of the settlement and his or her
23 estimated Individual Class Payment and Individual PAGA Payment and will further advise of the
24 setting of a Final Approval Hearing. The Notice shall be mailed in English only. A copy of the
25 notice is attached as *Exhibit A*.

26 24. “Objecting Class Member” means a Class Member, other than Plaintiffs, who
27 submits a valid and timely objection to the terms of this Agreement, pursuant to Paragraph 71(c)
28 below.

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

5 26. “PAGA Period” is deemed to be any time during the period of February 9, 2021,
6 through March 4, 2024.

7 27. “Participating Class Member” means any and all Class Members who do not opt-
8 out by submitting timely valid Requests for Exclusion.

9 28. “Parties” or “Settling Parties” mean Plaintiffs and Defendants, collectively.

10 29. “Preliminary Approval Date” means the date the Court approves the Settlement
11 Agreement and enters the Preliminary Approval Order.

12 30. “Preliminary Approval Order” means the judicial Order to be entered by the
13 Court, upon the application or motion of the Plaintiffs, preliminarily approving this Settlement
14 and providing for the issuance of the Notice to the Class, an opportunity to opt out of the
15 Settlement, an opportunity to submit timely objections to the Settlement, and setting a final
16 approval hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees
17 and costs. Provided that the motion is consistent with the terms herein, Defendants will not
18 object to Plaintiffs’ motion for preliminary approval but will be provided with an opportunity to
19 review and comment upon the motion before it is filed.

20 31. “QSF” means the Qualified Settlement Fund set up by the Administrator for the
21 benefit of the Participating Class Members and Aggrieved Employees, and from which the
22 settlement payments shall be made.

23 32. “Released Class Claims” or “Class Claims” by the Participating Class Members
24 upon Final Approval of the Settlement will include any and all claims stated in the Complaint
25 and those reasonably arising out of the facts stated in the Complaint, that were or could have
26 been pled under local, state, or federal law reasonably arising out of or relating to the facts
27 alleged in the Complaint against the Released Parties for the duration of the Class Period,
28 including: (1) failure to pay minimum wages, (2) failure to pay for nonproductive time under

1 Labor Code 226.2, (3) failure to reimburse business expenses, (4) failure to timely pay final
2 wages, (5) failure to provide accurate itemized wage statements, and (6) unfair and unlawful
3 competition. The time period governing the Released Class Claims shall be the Class Period.

4 33. “Released PAGA Claims” or “PAGA Claims” means any and all claims for civil
5 penalties under PAGA, that Plaintiffs alleged or could have reasonably alleged against the
6 Released Parties, on behalf of Aggrieved Employees and the State of California, reasonably
7 arising out of or relating to the facts or claims alleged in the Complaint and the relevant LWDA
8 notice letters, including all PAGA claims seeking civil penalties, attorneys’ fees, and/or interest
9 premised upon: (1) failure to pay minimum wages, (2) failure to pay for nonproductive time
10 under Labor Code 226.2, (3) failure to reimburse business expenses, (4) failure to timely pay
11 wages each period, (5) failure to timely pay wages upon separation of employment, (6) failure to
12 provide accurate itemized wage statements, and (7) all other claims for civil penalties
13 recoverable under the Private Attorneys General Act, Labor Code §§ 2698 et seq. based on the
14 facts or claims alleged in the LWDA notice letters and Complaint. The time period governing
15 the PAGA Released Claims shall be the PAGA Period. The PAGA Released Claims do not
16 release any Aggrieved Employees’ claims for wages or statutory penalties.

17 34. “Released Parties” means Defendants and their parents, subsidiaries, affiliates,
18 directors, owners, shareholders, officers, directors, employees, agents, heirs, and assigns.

19 35. “Release” shall mean the release and discharge of the Released Class Claims by
20 Plaintiffs and all Participating Class Members and their assignees.

21 36. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 69(a)
22 below.

23 37. “Response Deadline” is 30 calendar days from the date the Notice is mailed to the
24 Class Members.

25 38. “Service Payment” or “Service Award” means the amount approved by the Court
26 to be paid to Class Representatives in addition to their Individual Class Payment as a
27 Participating Class Members and Individual PAGA Payment as an Aggrieved Employees.

28 39. “Settlement Amount” is \$515,000.00, exclusive of Defendants’ obligation to fund

Defendants' respective shares of payroll taxes, as further discussed in Paragraph 49(a) below.

40. "TCA" means Defendant, Transportation Corporation of America, Inc., now known as TA Dedicated, Inc.

41. "Work Weeks" or "Weeks Worked" means all calendar weeks in which the Class Member or Aggrieved Employee was employed by Defendants in California as a truck driver based on the Class Members' or Aggrieved Employees' dates of employment in TCA's records. For purposes of calculating Weeks Worked, there will not be any fractional calculations (*i.e.*, a situation where an individual worked part of the week still counts as one Work Week).

B. General Terms

42. On February 14, 2022, Plaintiffs filed a putative class and representative PAGA action in the San Bernardino County Superior Court, alleging Class Claims and PAGA Claims, including: (a) failure to pay minimum and regular wages, (b) failure to pay for nonproductive time under Labor Code § 226.2, (c) failure to reimburse for business expenses, (d) failure to timely pay final wages, and (e) failure to provide accurate itemized wage statements; (f) unfair and unlawful competition, and (g) related PAGA claims.

43. Defendants deny Plaintiffs' claims and allegations and contends that the Action is not suitable for class certification.

44. The Class Representatives believe they can proceed with the representative and class claims, that the Action is meritorious, and that class certification is appropriate.

45. The Parties have conducted a thorough investigation into the facts of the Action. This includes conducting an extensive exchange of informal discovery, including Defendants' written policies and practices and confirmation regarding the uniform payroll and timekeeping practices for Class Members. Class Counsel is both knowledgeable about and has done extensive research with respect to the applicable law and potential defenses to the claims of the Class. Class Counsel has diligently pursued an investigation of the Class Members' claims against Defendants. Based on the foregoing data and on their own independent investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendants for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and

adequate and is in the best interest of the Class Members in light of all known facts and circumstances, including the risk of significant delay and uncertainty associated with litigation, various defenses asserted by Defendants, and numerous potential appellate issues.

46. On December 20, 2023, Plaintiffs and Defendants participated in a full-day mediation with Mark LeHocky, a well-respected wage-and-hour mediator. At the conclusion of mediation, Mr. LeHocky issued a mediator's proposal. The Parties accepted the mediator's proposal and reached the Settlement detailed herein.

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

48. Stipulation for Class Certification. For settlement purposes only, Defendants will stipulate that the Class Members described herein who do not Request Exclusion from the Class may be conditionally certified as a Class. This stipulation to certification is in no way an admission that class action certification is proper and shall not be admissible in this or in any other action except for the sole purposes of enforcing this Agreement. Should, for whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to class certification as part of the Settlement shall become null and void ab initio and shall have no bearing on, and shall not be admissible in connection with, the issue of whether certification would be appropriate in a non-settlement context. Defendants expressly reserve their rights and declare that they would continue to oppose class certification and the substantive merits of the case should the Court fail to issue Final Approval. Plaintiffs expressly reserves their rights and declares that they will continue to pursue class certification and a trial should the Court fail to issue Final Approval.

C. Terms of Settlement

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

(a) Settlement Amount: The Parties agree to settle this Action for Five Hundred Fifteen Thousand Dollars (\$515,000) (the "Settlement Amount"), which shall be jointly and severally owed and paid by Defendants, subject to the Escalator Clause and Defendants'

obligation to separately pay its share of the employer payroll taxes on the wage portion of the Individual Class Payments, which is the maximum amount that will be paid by Defendants and includes Individual Class Payments, Class Counsel's Attorneys' Fees and Costs Award, the Service Payment to the Class Representatives, Administration Costs, and PAGA Penalties.

(b) Net Settlement Amount: If the Court reduces the Attorneys' Fees and Costs Award, Service Award or Administrator Costs, or either increases or decreases the amount allocated to the PAGA Penalties, the difference shall be placed in the Net Settlement Amount and allocated to the Class. The Net Settlement Amount will be used to pay the Individual Class Payments to Participating Class Members.

(c) The Individual Class Payment for each Class Member will be calculated by the Administrator using the Class Data provided by Defendants as follows. Compensable workweeks will be all Weeks Worked by the Class Members during the Class Period. The dollars per compensable work week will be calculated by dividing the total Weeks Worked by Class Members into the Net Settlement Amount to determine a per work week value ("Workweek Value"). The Workweek Value will be multiplied by the number of Weeks Worked by a Participating Class Member during the Class Period to determine the distribution for a Participating Class Member. If there are any timely submitted Requests for Exclusion, the Administrator shall proportionately increase the Individual Class Payments for each Participating Class Member so that the amount actually distributed to Participating Class Members equals 100% of the Net Settlement Amount.

(d) Allocation of Individual Class Payments: The Individual Class Payments to Participating Class Members will be allocated as follows: 20% will be allocated as wages subject to withholding of all applicable local, state and federal taxes; and 80% will be allocated for interest and statutory penalties (pursuant to, e.g., California Labor Code sections 203, 210, 226) from which no taxes will be withheld. The Administrator will issue to each Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect to the penalties and interest allocations.

(e) Service Payment to Class Representatives: The amount, if any, awarded

1 to the Class Representatives as a Service Payment will be set by the Court in its discretion, not to
2 exceed \$7,500 to each Plaintiff, in exchange for the service that Plaintiffs performed on behalf of
3 the Class. Defendants agree not to oppose this request. The Service Payment to Plaintiffs will
4 be paid out of the Settlement Amount. The Class Representatives will be issued an IRS Form
5 1099 in connection with this payment. Plaintiffs shall be solely and legally responsible to pay all
6 applicable taxes on this payment. The Parties agree that any amount awarded as the Service
7 Payment to Plaintiffs less than the requested amount shall not be a basis for Class Counsel to
8 void this Settlement Agreement. Should the Court approve a lesser amount for the Service
9 Payment, the difference shall be added to the Net Settlement Amount to be distributed to the
10 Participating Class Members.

11 (f) Attorneys' Fees and Costs Award: Class Counsel shall make a request to
12 the Court for the Attorney's Fees and Costs Award. Defendants agree to not oppose the
13 Attorney's Fees and Cost Award nor oppose any contention by Class Counsel that attorneys' fees
14 should be based on the common fund theory. The Attorney's Fee and Cost Award shall be paid
15 from the Settlement Amount, and, except for this award, Defendants shall have no further
16 obligation to pay any attorneys' fees, costs, or expenses to Class Counsel. Should the Court
17 approve a lesser amount than what is sought by Class Counsel, the difference shall be added to
18 the Net Settlement Amount to be distributed to the Participating Class Members. Any Court
19 order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the
20 Settlement Agreement or otherwise void the Settlement. The Administrator shall issue to Class
21 Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded by the
22 Court.

23 (g) Administration Costs: The Administrator Costs will be paid from the
24 Settlement Amount in the amount approved by the Court, and not exceed \$6,500 based on the
25 Administrator's all-in proposal, unless as otherwise approved by all Parties and the Court.

26 (h) PAGA Penalties: The Parties agree that \$50,000 is allocated to PAGA
27 Penalties, and is to be paid from the Settlement Amount, subject to Court approval. Of this
28 amount, \$37,500 (75%) shall be paid to the LWDA in satisfaction of civil penalties under the

1 Private Attorney General Act of 2004 (“PAGA”) and \$12,500 (25%) will form the Individual
2 PAGA Payments to the Aggrieved Employees, which shall be calculated and allocated pro-rata
3 on a Work Week basis, which will be treated entirely as civil penalties and shall be reported as
4 required on an IRS Form 1099. Class Counsel shall give proper notice to the LWDA of the
5 Settlement.

6 (i) Tax Liability: Class Counsel, Defendants, and Defendants’ counsel make
7 no representations as to the tax treatment or legal effect of settlement amounts called for
8 hereunder, and Plaintiffs and the Class Members are not relying on any statement or
9 representation by Class Counsel, Defendants, or Defendants’ counsel in this regard. Plaintiffs,
10 Participating Class Members, and Aggrieved Employees understand and agree that they will be
11 solely responsible for the payment of any taxes and penalties assessed on their respective
12 Individual Class Payments and Individual PAGA Payments, described herein. Forms 1099 will
13 be distributed in the manner required by the Internal Revenue Code of 1986 (the “Code”) and
14 consistent with this Agreement. If the Code, the regulations promulgated thereunder, or other
15 applicable tax law, is changed after the date of this Agreement, the processes set forth in this
16 Section may be modified in a manner to bring Defendants into compliance with any such
17 changes. Plaintiffs, Participating Class Members, and Aggrieved Employees understand and
18 agree that they will be solely responsible for the payment of any taxes and penalties assessed on
19 their respective payments described herein.

20 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
21 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
22 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
23 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
24 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
25 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
26 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
27 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
28 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES

1 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
2 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
3 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
4 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
5 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
6 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
7 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
8 ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
9 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
10 ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
11 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
12 ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
13 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
14 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
15 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

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

25 (l) Class Counsel and Plaintiffs believe that the Settlement is fair and
26 reasonable and will so represent same to the Court.

27 50. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
28 Participating Class Members under this Agreement, as well as any other payments made

pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any benefit plans for which any Participating Class Members may be eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, stock purchase or other types of equity plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this settlement will not affect any rights, contributions, or amounts to which any Participating Class Members may be entitled under any benefit plans. The Parties agree that the amounts paid pursuant to this settlement are not for days or hours worked, and are not included toward any regular rate of pay calculation, or any benefit vesting or accrual purpose.

D. Release by the Participating Class Members

51. Upon entry of the Final Approval Order and Defendants funding of the Settlement Amount and the required employer-side payroll taxes, and except as to such rights or claims as may be created by this Agreement, Plaintiffs and the Participating Class Members will forever completely release and discharge the Released Parties from the Released Class Claims for the Class Period.

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

53. Class Representatives, on behalf of themselves and the Class, acknowledge and agree that the claims for unpaid wages and untimely payment of wages in the Action are disputed, and that the payments set forth herein constitute payment of all sums allegedly due to them. Class Representatives, on behalf of themselves and the Class, acknowledge and agree that Labor Code § 206.5 is not applicable to the Parties or Settlement. Labor Code § 206.5 provides in pertinent part as follows: "An employer shall not require the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made."

E. Release of PAGA Claims

54. Upon entry of the Final Approval Order and Defendants' funding of the Settlement Amount and the required employer-side payroll taxes, Plaintiffs, the LWDA and

1 Aggrieved Employees shall completely release and discharge the Released Parties from the
2 Released PAGA Claims for the PAGA Period.

3 55. Regardless of submitting a valid Request for Exclusion, neither Plaintiffs nor any
4 Aggrieved Employee shall have the right to opt-out or otherwise exclude themselves from
5 releasing the Released PAGA Claims.

6 56. It is the intent of the Parties that the Final Approval Order shall have full
7 equitable and collateral estoppel and res judicata effect to the fullest extent permitted by law.

8 **F. Release by Class Representatives**

9 57. Class Representatives do hereby, for themselves and their spouses, heirs,
10 successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators,
11 guardians, personal representatives, and assigns forever and completely release and discharge the
12 Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises,
13 agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs,
14 losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated
15 damages, exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever,
16 from the beginning of time through the execution of this Agreement, whether known or
17 unknown, suspected or unsuspected, including but not limited to all claims arising out of, based
18 upon, or relating to Class Representative's employment with Defendants or the remuneration for
19 or termination of such employment (the "Class Representatives' Claims").

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

1 59. Class Representatives agree that there is a risk that any injury that they may have
2 suffered by reason of the Released Parties' relationship with them might not now be known, and
3 there is a further risk that said injuries, whether known or unknown at the date of this Settlement
4 Agreement, might possibly become progressively worse, and that as a result thereof further
5 damages may be sustained. Nevertheless, Class Representatives agree to forever and fully
6 release and discharge the Released Parties, and understands that by the execution of this
7 Settlement Agreement no further claims for any such injuries that existed at the time of the
8 execution of this Settlement Agreement may ever be asserted by Class Representatives with
9 respect to claims arising in the time period from the beginning of time to the execution of this
10 Settlement Agreement.

11 60. Class Representatives expressly waive and relinquish all rights and benefits
12 afforded by Section 1542 of the Civil Code of the State of California and do so understanding
13 and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil
14 Code of the State of California states:

15 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
16 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
17 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
18 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
19 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
20 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
21 OR RELEASED PARTY.

22 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
23 full and complete release and discharge of all parties, Class Representatives expressly
24 acknowledge that this Settlement Agreement is intended to include in its effect, without
25 limitation, all claims that Class Representatives knew of, as well as all claims that they do not
26 know or suspect to exist in their favor against the Released Parties, or any of them, for the time
27 period from the beginning of time to the execution of this Settlement Agreement, and that this
28 Settlement Agreement contemplates the extinguishment of any such Class Representatives'
Claims. Notwithstanding the above, the general release by Class Representatives shall not extend
to claims for workers' compensation benefits (including Workers Comp. Case ADJ 11781204),

claims for unemployment benefits, or other claims that may not be released by law.

Upon executing this Agreement, Class Representatives shall have seven days in which they may revoke this release only as it pertains to their ADEA claims. The ADEA release shall not be enforceable as to each Class Representative until this revocation period has expired without that Class Representative exercising his or her right of revocation. Notice of the revocation of this Agreement must be in writing and delivered or emailed to Christopher J. Eckhart, Scopelitis, Garvin, Light, Hanson & Feary, P.C., 10 West Market Street, Suite 1400, Indianapolis, IN 46204, ceckhart@scopelitis.com, no later than 10:00 a.m. Eastern Time on the next business day following the expiration of the seven-day period.

G. Interim Stay of Proceedings

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

H. Notice Process

62. Appointment of Administrator. The Parties have agreed to the appointment of the Administrator to perform the duties of a settlement administrator, including mailing the Notice, using standard devices to obtain forwarding addresses, independently reviewing and verifying documentation associated with any claims or opt-out requests, resolving any disputes regarding the calculation or application of the formula for determining the Individual Class Payment and Individual PAGA Payments, drafting and mailing the settlement checks to Participating Class Members and Aggrieved Employees, issuing all necessary tax forms, preparing declarations and reports for the Parties and the Court, and performing such other tasks as set forth herein or as the Parties mutually agree or that the Court orders.

63. Disputes Regarding Administration. Any and all disputes relating to administration of the Settlement by the Administrator (except for disputes regarding Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Agreement, until Plaintiffs and Defendants notify the Court that all payments and obligations contemplated by this Agreement have been fully carried out. Prior to

1 presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the
2 dispute without the necessity of Court intervention. The Administrator shall also be responsible
3 for issuing to Plaintiffs, Participating Class Members, and Aggrieved Employees, and Class
4 Counsel any Tax Forms as may be required by law for all amounts paid pursuant to this
5 Agreement.

6 64. Class Data. Within fourteen (14) days after entry of the Preliminary Approval
7 Order, Defendants shall provide the Class Data to the Administrator. The Administrator will run
8 a check of the Class Members' addresses against those on file with the U.S. Postal Service's
9 National Change of Address List. The Class Data provided to the Administrator will remain
10 confidential and will not be used or disclosed to anyone, except as required by applicable tax
11 authorities, pursuant to Defendants' express written consent, or by order of the Court. Although
12 Class Counsel will not be provided with the list of Class Data, nothing herein shall prevent Class
13 Counsel from communicating with Class Members regarding the Action and Settlement.

14 65. Total Work Weeks. At least 5 days prior to mailing the Notice, the Administrator
15 shall provide a spreadsheet to Class Counsel and Defense Counsel containing a preliminary
16 calculation of all payments to be paid from the Settlement Amount, including the estimated
17 Individual Class Payments to each Class Member and Individual PAGA Payments to each
18 Aggrieved Employee (a person's name shall be redacted and a control number used in place of
19 the name).

20 66. Notice. The Notice, as approved by the Court, shall be sent by the Administrator
21 to the Class Members, by first class mail, in English only, within ten (10) calendar days
22 following the Administrator's receipt of the Class Data. The Administrator shall use standard
23 devices, including a skip trace, to obtain forwarding addresses of Class Members if any
24 envelopes are returned.

25 67. Returned Notice Packets. The Administrator will take steps to ensure that the
26 Notice is received by all Class Members, including utilization of the National Change of Address
27 Database maintained by the United States Postal Service to review the accuracy of and, if
28 possible, update a mailing address. Notices will be re-mailed to any Class Member for whom an

1 updated address is located within ten (10) calendar days following both the Administrator
2 learning of the failed mailing and its receipt of the updated address. The Notice shall be identical
3 to the original Notice, except that it shall notify the Class Member that the exclusion (opt-out)
4 request or objection must be returned by the later of the Response Deadline or fifteen (15) days
5 after the remailing of the Notice.

6 68. Presumption Regarding Receipt of Notice. It will be conclusively presumed that
7 if an envelope has not been returned to Administrator by the Response Deadline that the Class
8 Member received the Notice.

9 69. Disputes Regarding Class Data. Class Members are deemed to participate in the
10 Settlement unless they opt-out, and Aggrieved Employees may not opt out of the Released
11 PAGA Claims. The Notice will inform Class Members of his/her estimated Individual Class
12 Payment and Individual PAGA Payment, as well as the number of weeks he/she worked during
13 the Class Period and the PAGA Period. Class Members may dispute their Weeks Worked if they
14 feel they should be credited with more Weeks Worked in the Class Period and/or PAGA Period
15 in California than Defendants' records show by timely submitting evidence to the Administrator.
16 Defendants' records will be presumed determinative absent reliable evidence to rebut
17 Defendants' records, but the Administrator will evaluate the evidence submitted by the Class
18 Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to
19 meet and confer in good faith about the evidence to determine the Class Member's actual
20 number of Work Weeks and estimated Individual Class Payment and Individual PAGA Payment.
21 If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the
22 Court to render a final decision. Class Members and Aggrieved Employees will have until the
23 Response Deadline to dispute Weeks Worked, object or opt out, unless extended by the Court.

24 70. Declaration of Due Diligence. The Administrator shall provide counsel for the
25 Parties, no later than 5 days after the initial Response Deadline, a declaration of due diligence
26 and proof of mailing with regard to the mailing of the Notice.

27 71. Class Members' Rights. Each Class Member will be fully advised of the
28 Settlement, the ability to object to the settlement, and the ability to opt-out or request exclusion

1 from the Class Claims portion of the Settlement. The Notice will inform the Class Members of
2 the Court-established deadlines for filing objections or requesting exclusion from the Settlement
3 in accordance with the following guidelines:

4 (a) Requests for Exclusion from Class. Any Class Member, other than
5 Plaintiffs, may request to be excluded from the Class by submitting a “Request for Exclusion” to
6 the Administrator, postmarked on or before the Response Deadline. The Request for Exclusion
7 should state:

8 “I WISH TO BE EXCLUDED FROM THE CLASS IN THE
9 LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE
10 EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT
11 RECEIVE MY INDIVIDUAL CLASS PAYMENT FROM THIS
12 LAWSUIT.”

13 To be valid, any Request for Exclusion must include the full name, address, telephone
14 number, last four digits of the social security number or date of birth, and signature of the Class
15 Member requesting exclusion. The Request for Exclusion must be returned by mail to the
16 Administrator at the specified address set forth in the Notice. Any such Request must be made in
17 accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only if
18 postmarked by the Response Deadline, unless the Parties otherwise agree in writing. Any Class
19 Member who timely requests exclusion in compliance with these requirements: (i) will not have
20 any rights under this Agreement, including the right to object, appeal or comment on the
21 Settlement; (ii) will not be entitled to receive the Individual Class Payment under this
22 Agreement; and (iii) will not be bound by this Agreement, or the Judgment. Any Class Member
23 who is an Aggrieved Employee who requests timely exclusion will still be subject to the
24 Released PAGA Claims to the fullest extent permitted by law and receive an Individual PAGA
25 Payment. All Parties and their counsel, including Defendants’ respective members, member
26 managers, owners, officers, and directors, shall not encourage or solicit opt-outs or objections,
27 directly or indirectly, through any means.

28 (b) Binding Effect on Participating Class Members. All Participating Class

Members will: (i) be bound by the terms and conditions of this Agreement, the Judgment, and the releases set forth herein; and (ii) except as otherwise provided herein, will be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of the Settlement.

(c) Objections to Settlement. Any Class Member, other than Plaintiffs, who does not submit a valid and timely Request for Exclusion may object to the terms of this Agreement. To object, a Class Member shall inform the Administrator, in writing, of his or her objection which must be postmarked by the Response Deadline at the address set forth in the Notice. Such objection shall include the Objecting Class Member's full name, address, telephone number, last four digits of the social security number or date of birth, signature, and dates of employment with Defendant, in addition to the case name and number, the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof, and, if the Objecting Class Member is represented by counsel, the name and address of his or her counsel. The Administrator shall provide objections, if any, to Class Counsel and Defense Counsel within three (3) calendar days of receipt, and the Administrator shall attach the same to its declaration of due diligence and file with the Court prior to the Final Approval Hearing. An Objecting Class Member remains eligible to receive monetary compensation from the Settlement. Plaintiffs and Defendants shall not be responsible for any fees, costs, or expenses incurred by an Objecting Class Member and/or his or her counsel related to any objections to the Settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment under Code of Civil Procedure § 663.

(d) Failure to Object. Any Class Member who does not timely and properly become a party of record by intervening or filing a motion to vacate the judgment waives any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion under California Code of Civil Procedure section 473, and extraordinary writs.

1 (e) Responses to Objections. Counsel for the Parties may file a response to
2 any objections submitted by an Objecting Class Member at least five (5) court days before the
3 date of the Final Approval Hearing.

4 (f) Class Members will have until the Response Deadline to object or submit
5 a Request for Exclusion to the Administrator by U.S. Mail. The Administrator shall disclose
6 jointly to Class Counsel and Defense Counsel what objections or Requests for Exclusion were
7 timely submitted on a weekly basis, and upon the request of Class Counsel or Defense Counsel.

8 72. Funding of the Settlement Amount. Defendants shall deposit the Settlement
9 Amount, plus Defendants' payroll taxes owed on Individual Class Payments, into the QSF with
10 the Administrator within twenty (20) days after the Effective Date.

11 73. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
12 Settlement Amount by Defendants, the Administrator shall mail the Individual Class Payments
13 to the Participating Class Members, the Individual PAGA Payments to the Aggrieved
14 Employees, the payment to Class Counsel for the Attorneys' Fees and Costs Award, any Service
15 Payment to the Class Representative, the payment to the LWDA for PAGA Penalties, and will
16 pay itself the Administration Costs.

17 74. Deadline for Cashing Settlement Checks. Participating Class Members and
18 Aggrieved Employees shall have 180 calendar days after mailing by the Administrator to cash
19 their settlement checks. The release will be binding upon all Participating Class Members who
20 do not cash their checks within the 180-day period. In the event that any settlement check is
21 returned to the Administrator within 180 days of mailing, the Administrator will, within five (5)
22 business days of receipt of the returned settlement check, perform a skip trace to locate the
23 individual, and notify Defense Counsel and Class Counsel of the results. If a new address is
24 located by these means, the Administrator will have ten (10) business days to re-issue the check.
25 Neither Defendants, Defense Counsel, Class Counsel, Plaintiffs, nor the Administrator will have
26 any liability for lost or stolen settlement checks, forged signatures on settlement checks, or
27 unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a
28 Participating Class Member and/or Aggrieved Employee notifies the Administrator that he or she

believes that a settlement check has been lost or stolen, the Administrator shall immediately stop payment on such check. If the check in question has not been negotiated prior to the stop payment order, the Administrator will issue a replacement check.

(a) If any Participating Class Member's check is not cashed within the time periods noted above, the check will be void and a stop-payment will be issued, and the Administrator shall issue the unclaimed funds to the California State Controller's Office in the name of the Class Member.

(b) If any Aggrieved Employee's check is not cashed within the time periods noted above, the check will be void and a stop-payment will be issued, and the Administrator shall issue the unclaimed funds to the California State Controller's Office in the name of the Aggrieved Employee.

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

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

- (a) Approving as to form and content the proposed Notice;
- (b) Directing the mailing of the Notice by first class mail to the Class Members;
- (c) Preliminarily approving this Settlement;
- (d) Preliminarily certifying the class for purposes of this Settlement;
- (e) Advising the LWDA of the proposed Settlement; and
- (f) Scheduling the Final Approval Hearing on the issue of whether this Settlement should be finally approved as fair, reasonable and adequate.

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

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

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

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

(c) Entering judgment approving settlement.

K. Voiding the Agreement

77. If 4 or more of the Class Members opt out of the settlement, Defendants shall have the option to nullify the settlement by giving written notice to the Settlement Administrator and Class Counsel within 7 days after the Response Deadline.

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

79. If the Settlement is voided or fails for any reason, Plaintiffs and Defendants will have no further obligations under the Settlement, including any obligation by Defendants to pay the Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

80. If the Settlement is voided or fails for any reason, any costs incurred by the Administrator shall be borne equally by Defendants and Plaintiffs, unless otherwise specified in this Agreement.

L. Other Terms

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

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

1 83. Parties' Authority. The signatories hereto represent that they are fully authorized
2 to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.

3 84. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
4 accomplish the terms of this Agreement, including but not limited to, execution of such
5 documents and to take such other action as may reasonably be necessary to implement the terms
6 of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
7 contemplated by this Agreement and any other efforts that may become necessary by order of the
8 Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as
9 practicable after execution of this Agreement, Class Counsel shall, with the assistance and
10 cooperation of Defendants and Defense Counsel, take all necessary steps to secure the Court's
11 preliminary and final approval of the settlement, and the final entry of judgment.

12 85. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
13 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
14 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
15 cause of action or rights released and discharged by this Agreement.

16 86. No Admission. Defendants deny any and all liability to Plaintiffs and/or any Class
17 Member and/or Aggrieved Employee in this Action, as to any and all causes of action that were
18 asserted or that might have been asserted in this Action. Nonetheless, Defendants wish to settle
19 and compromise the matters at issue in the Complaint to avoid further substantial expense and
20 the inconvenience and distraction of protracted and burdensome litigation. Defendants have
21 taken into account the uncertainty and risks inherent in litigation, and without conceding any
22 infirmity in the defenses that they have asserted or could assert against Plaintiffs, have
23 determined that it is desirable and beneficial that Plaintiff' claims be settled in the manner and
24 upon the terms and conditions set forth in this Agreement.

25 87. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
26 Order, nothing contained herein, nor the consummation of this Agreement, is to be construed or
27 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
28 Defendants or any of the other Released Parties. Each of the Parties hereto has entered into this

1 Agreement with the intention of avoiding further disputes and litigation with the attendant
2 inconvenience and expenses. This Agreement is a settlement document, and it, along with all
3 related documents such as the notices, and motions for preliminary and final approval, shall,
4 pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be
5 inadmissible in evidence in any proceeding, except an action or proceeding to approve the
6 settlement, and/or interpret or enforce this Agreement. The stipulation for class certification as
7 part of this Agreement is for settlement purposes only and if, for any reason the settlement is not
8 approved, the stipulation will be of no force or effect.

9 88. No Publicity. Neither Plaintiffs nor Plaintiffs' counsel shall issue any press
10 release related to the Settlement. Plaintiffs and Plaintiffs' counsel agree that, prior to preliminary
11 approval of the Settlement, they will keep the terms of the Settlement confidential except for
12 purposes of communicating with Plaintiffs, LWDA, experts, administrators, the Court, and as
13 necessary to respond to any Class Members. Plaintiffs shall be informed that the Settlement is
14 confidential and shall be advised to keep the Settlement confidential. From and after preliminary
15 approval of the Settlement, Defendants, Defense Counsel, Plaintiffs and Plaintiffs' counsel may:
16 (i) as required by law; (ii) as required under the terms of the Settlement; or (iii) as needed for tax
17 or insurance purposes., comment regarding the specific terms of the Settlement. Additionally,
18 Class Counsel may disclose the case name and case number in other courts to establish adequacy
19 of representation. In all other cases, Defendants, Defense Counsel, Plaintiffs and Class Counsel
20 agree to limit their statements regarding the terms of the Settlement, whether oral, written, or
21 electronic (including the world wide web), to say the Action has been resolved and that they are
22 satisfied with the Settlement terms. Nothing in this paragraph is intended to interfere with Class
23 Counsel's duties and obligations to faithfully discharge their duties as counsel for the Class
24 Members, including but not limited to, communicating with Class Members, Aggrieved
25 Employees, LWDA, and the Court regarding the Settlement.

26 89. Notices. Unless otherwise specifically provided herein, all notices, demands or
27 other communications given hereunder shall be in writing and shall be deemed to have been duly
28

given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed:

To the Class:

Brian J. Mankin
brian@lmlfirm.com
Lauby, Mankin & Lauby LLP
5198 Arlington Ave, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

To Defendants:

Christopher J. Eckhart (SBN 331414)
ceckhart@scopelitis.com
SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, P.C.
10 West Market Street, Suite 1400
Indianapolis, Indiana 46204
Tel: (317) 637-1777 | Fax: (317) 687-2414

90. Construction. The Parties hereto agree that the terms and conditions of this Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his or its counsel participated in the drafting of this Agreement. Plaintiffs and Defendants 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.

91. 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 Agreement or any provision hereof. Each term of this Agreement is contractual and not merely a recital.

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

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

8 94. Choice of Law. This Settlement Agreement shall be governed by and construed,
9 enforced and administered in accordance with the laws of the State of California, without regard
10 to its conflicts-of-law rules.

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

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

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

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

1 Dated: March ___, 2024

PLAINTIFFS AND CLASS REPRESENTATIVE:

2
3 _____
Starla Hagon

4 Dated: March ___, 2024

PLAINTIFFS AND CLASS REPRESENTATIVE:

5
6 _____
Michael Jespersen

7
8 Dated: March ___, 2024

**DEFENDANT TRANSPORT CORPORATION OF
AMERICA, INC**

9
10 _____
11 By: _____ (name)
12 _____ (title)

13 Dated: March ___, 2024

DEFENDANT:

14
15 _____
Eric Anson

16 Dated: March ___, 2024

DEFENDANT:

17
18 _____
Melinda Green

19 **APPROVED AS TO FORM:**

20 Dated: March ___, 2024

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP

21
22 _____
23 Brian J. Mankin
Attorneys for Plaintiff

24 Dated: March ___, 2024

COUNSEL FOR DEFENDANTS
SCOPELITIS, GARVIN, LIGHT, HANSON & FEARY, P.C.

25
26 _____
27 Christopher J. Eckhart, Esq.
28 Attorneys for Defendants

EXHIBIT “B”

COURT APPROVED NOTICE OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT

Hagon, et al. v. Transport Corporation of America, Inc.
(San Bernardino County Superior Court, Case No. CIVSB2203409)

***The San Bernardino County Superior Court authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from a class and representative action lawsuit (“Action”) against Transport Corporation of America, Inc. (TCA), , Eric Anson, and Melinda Green (collectively, “Defendants”) for alleged labor code claims.

The Action was filed by two former employees of Defendants, and seeks payment of unpaid wages, statutory damages and penalties, interest and attorneys’ fees on behalf of the “Class Members” defined as all current and former truck drivers who, based on TCA’s current records, had a primary residence in California and who were employed by TCA, at any time during the Class Period (which is February 14, 2018, through March 4, 2024). The Action also seeks penalties under the California Private Attorney General Act (“PAGA”) for all “Aggrieved Employees” defined as all current and former truck drivers who, based on TCA’s current records, had a primary residence in California and who were employed by TCA, at any time during the PAGA Period (which is February 9, 2021, through March 4, 2024).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants to fund Individual Class Payments to Class Members, and (2) a PAGA Settlement requiring Defendants to fund Individual PAGA Payments to Aggrieved Employees and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

[CLASS MEMBER NAME] **[ID/CONTROL NUMBER]**

Two Parts	Weeks Worked During: Class Period (Class Member) and PAGA Period (Aggrieved Employee)	Your Estimated Share
Class Member	INSERT (During Class Period)	\$INSERT (Individual Class Payment)
Aggrieved Employee	INSERT (During PAGA Period)	\$INSERT (Individual PAGA Payment)

Based on Defendants’ records, and the Parties’ current assumptions, your estimated Individual Class Payment (less withholding) and your Individual PAGA Payment are shown in the chart above, along with the Workweeks you are credited with working during the Class Period and PAGA Period, respectively, according to Defendants’ records. The actual amount you may receive could be adjusted depending on several factors. (If no amount is stated for your Individual PAGA Payment, then you are not eligible for an Individual PAGA Payment because you did not work during the PAGA Period.

If you believe that you worked more weeks during either period than Defendants’ records show in the chart above, you can submit a challenge by **DATE**, 2024 (“**Response Deadline**”). See **Section 4** of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs’ attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendants to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendants.

If you worked for Defendants during the Class Period and/or the PAGA Period, you have a few options as shown in the Chart below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive a settlement payment if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described in Section 3 .
EXCLUDE YOURSELF	If you do <u>not</u> wish to participate in the settlement of the Class Claims, you may “opt-out” of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion by [REDACTED], 2024 (see Section 6 for more details on how to opt-out). If you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive an Individual Class Payment, but you will preserve your right to pursue the Released Class Claims described below subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. You still will receive a payment as part of the civil penalties paid under PAGA and will release your claims for such civil penalties. See Section 6 of this Notice.
OBJECT	If you decide to object to the settlement with respect to the Class Claims because you find it unfair or unreasonable, you must submit an Objection stating why you object to the settlement by [REDACTED], 2024 (see Section 7 for details on how to object).
DISPUTE THE NUMBER OF WEEKS WORKED	If you believe the number of workweeks that you were credited with working in the chart above is incorrect, you may submit a written dispute to the Administrator (see Section 4 for more details on how to dispute your credited Weeks Worked). Defendants’ records will be presumed correct, but you may provide evidence to the Administrator showing how many Work Weeks you believe you should be credited.

YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT IT’S NOT REQUIRED	
DATE: [REDACTED], 2024 TIME: 8:30 A.M.	At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiffs and Class Representatives, Starla Hagon and Michael Jespersen, are former truck drivers for Defendants. The Action accuses Defendants of violating California labor laws due to the alleged: failure to pay minimum and regular wages, failure to pay for nonproductive time under Labor Code § 226.2, failure to reimburse for business expenses, failure to timely pay final wages, and failure to provide accurate itemized wage statements. Based on the same claims, Plaintiffs also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiffs are represented by attorneys in the Action (“Class Counsel”). See Section 9 below for their contact information.

Defendants strongly deny violating any laws or failing to pay any wages and contend they complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendants or Plaintiffs are correct on the merits. In the meantime, Plaintiffs and Defendants hired an experienced, neutral mediator in an effort to resolve the Action by negotiating to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action, Plaintiffs and Defendants have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Defendants Will Pay \$515,000 as the Settlement Amount. Defendants have agreed to deposit the Settlement Amount into an account controlled by the Administrator of the Settlement. The Administrator will use the Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorneys’ fees and expenses, the Administrator’s Costs, and PAGA Penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendants will fund the Settlement not more than 20 days after the Court’s grants Final Approval, assuming that no Class Member objects or intervenes in the Settlement, which will delay payments until after the deadline to file an appeal or an appeal is resolved.

2. Court Approved Deductions from Settlement. At the Final Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following deductions from the Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:

- A. Up to one-third of the Settlement Amount to Class Counsel for attorneys’ fees (\$171,666.66) and up to \$20,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
- B. Up to \$7,500 to each Class Representative as a Service Payment for filing the Action, working with Class Counsel and representing the Class. The Class Representatives’ Service Payment will be the only monies Plaintiffs will receive other than Plaintiffs’ Individual Class Payment and any Individual PAGA Payment.
- C. Up to \$6,500 to the Administrator for services administering the Settlement.
- D. Up to \$50,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% to Individual PAGA Payments to all Aggrieved Employees, which will be divided based on their share of Weeks Worked during the PAGA Period.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the remainder (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Weeks Worked during the Class Period.

4. Taxes Owed on Payments to Class Members. Plaintiffs and Defendants are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages (“Wage Portion”) and 80% to penalties and interest (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. TCA will

separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiffs and Defendants have agreed to these allocations, neither side is giving you any advice on whether your payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name.

If the monies represented by your check are sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you opt-out of the Settlement no later than the Response Deadline. See Section 6 of this Notice for details on how to Opt-Out.

7. The Proposed Settlement Will be Void If the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Defendants have agreed that, in either case, the Settlement will be void; Defendants will not pay any money and Class Members will not release any claims against Defendants.

8. Administrator. The Court has appointed a neutral company, Phoenix Settlement Administrators (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion and Objections (if any). The Administrator will also decide any Disputes over weeks worked, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.

9. Participating Class Members' Release. After the Judgment is final and Defendants have fully funded the Settlement Amount and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or related entities for wages based on the facts alleged in the Action for the duration of the Class Period and PAGA Period, which are resolved by this Settlement.

The Participating Class Members will be bound by the following release: All Participating Class Members release the Released Parties from any and all claims stated in the Complaint and those reasonably arising out of the facts stated in the Complaint, that were or could have been pled under local, state, or federal law reasonably arising out of or relating to the facts alleged in the Complaint against the Released Parties for the duration of the Class Period, including: (1) failure to pay minimum wages, (2) failure to pay for nonproductive time under Labor Code 226.2, (3) failure to reimburse business expenses, (4) failure to timely pay final wages, (5) failure to provide accurate itemized wage statements, and (6) unfair and unlawful competition (the “Released Class Claims”).

“Released Parties” includes Defendants and their parents, subsidiaries, directors, owners, shareholders, officers, directors, employees, and agents.

10. Release of Released PAGA Claims. After the Court's judgment is final, and Defendants have paid the Settlement Amount (and separately paid the employer-side payroll taxes), Plaintiffs, the State of California, the LWDA and Aggrieved Employees shall release the Released Parties from any and all claims for civil penalties under PAGA, that Plaintiffs alleged or could have reasonably alleged against the Released Parties, on behalf of Aggrieved Employees and the State of California, reasonably arising out of or relating to the facts or claims alleged in the Complaint and the relevant

LWDA notice letters, including all PAGA claims seeking civil penalties, attorneys' fees, and/or interest premised upon: (1) failure to pay minimum wages, (2) failure to pay for nonproductive time under Labor Code 226.2, (3) failure to reimburse business expenses, (4) failure to timely pay wages each period, (5) failure to timely pay wages upon separation of employment, (6) failure to provide accurate itemized wage statements, and (7) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 et seq. based on the facts or claims alleged in the LWDA notice letters and Complaint. The time period governing the PAGA Released Claims shall be the PAGA Period. The PAGA Released Claims do not release any Aggrieved Employees' claims for wages or statutory penalties ("Released PAGA Claims.") The time period governing the Released PAGA Claims shall be any time during the PAGA Period.

4. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Weeks Worked by all Participating Class Members during the Class Period, and (b) multiplying the result by the number of Weeks Worked by each individual Participating Class Member during the Class Period.

2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$12,500 by the total number of Weeks Worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by the number of Weeks Worked by each individual Aggrieved Employee during the PAGA Period.

3. Disputing Weeks Worked. The number of weeks you worked during the Class Period and PAGA Period, as recorded in Defendants' records, are stated in the first page of this Notice. You have until [REDACTED], 2024 (the "Response Deadline") to dispute the number of Workweeks credited to you by submitting evidence to the Administrator.

You need to support your dispute by sending copies of pay stubs or other records. The Administrator will accept Defendants' calculation of weeks worked based on Defendants' records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek challenges based on your submission and on input from Class Counsel and Defendants' Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members and Aggrieved Employees. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (*i.e.*, every Class Member who does not opt-out) and Aggrieved Employee. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

2. Aggrieved Employees Only. If you opted out of the Class settlement, but qualify as an Aggrieved Employee, then the Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee, including those who opt out of the Class Settlement.

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

If you **do not** wish to take part in the release of the Class Claims in the Settlement, you may exclude yourself by sending to the Settlement Administrator a "Request for Exclusion" letter/card postmarked no later than the Response Deadline ([REDACTED], 2024) with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should state:

"I WISH TO BE EXCLUDED FROM THE CLASS IN THE LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE MY INDIVIDUAL CLASS PAYMENT FROM THIS LAWSUIT."

Any person who submits a timely Request for Exclusion from the Class Claims (1) will not have any rights under this Settlement, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive an Individual Class Payment; (3) will preserve the right to pursue the Released Class Claims, and (4) will not be bound by this Settlement, or the Judgment.

You cannot opt-out of the PGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement remain eligible for Individual PGA Payments.

If you do not want to participate in the Settlement, the Administrator will exclude you based on timely receipt of a writing communicating your request to be excluded. Be sure to personally sign your request, identify the Action as Hagon, et al. v. Transport Corporation of America, Inc., and include your identifying information (full name, address, telephone number, approximate dates of employment, and last four digits of social security number or your date of birth for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **Send your request to be excluded to the Administrator, by postmarked on or before the Response Deadline, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. A Participating Class Member who disagrees with any aspect of the Settlement may wish to object. **The deadline for sending written objections to the Administrator is the Response Deadline ([REDACTED], 2024).**

If you wish to object to the proposed Settlement, you or your own attorney must submit a written objection, and the objection must include your full name, address, telephone number, last four digits of the social security number or date of birth, signature, and dates of employment with Defendants, in addition to the case name and number (Hagon, et al. v. Transport Corporation of America, Inc., Case No. CIVSB2203409), the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof. Additionally, if you are represented by an attorney, the objection must include the name and address of your attorney. This objection and all supporting information must be sent to the Administrator at the address listed in Section 9, **postmarked on or before the Response Deadline.**

If you do not comply with these procedures and the deadline for objections, the Court may not consider your objection at the Final Approval Hearing, and you may lose the right to contest the approval of the Settlement. You are still eligible to receive a settlement payment should the settlement become Final even if you object to the settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. WHEN IS THE FINAL APPROVAL HEARING?

On [REDACTED], 2024, the Court will hold a public hearing in in Department S26 of the Superior Court for the State of California, County of San Bernardino, 247 West 3rd Street, San Bernardino, CA 92415, for the purposes of determining whether the proposed Settlement is fair, adequate and reasonable and should be approved, whether to approve Class Counsel's applications for attorneys' fees and costs, whether to approve the payments to the LWDA, and whether to approve Plaintiffs' request for the service award. This hearing may be continued or rescheduled by the Court. Objectors to the proposed settlement will be provided notice in the event that the Final Approval Hearing is continued to a later date. Class Members who support the proposed Settlement do not need to appear at the hearing and do not need to take any other action to indicate their approval. Class Members who object to the proposed Settlement are not required to attend the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

If you have questions about this Notice, the process to Opt-Out or Object, or the Settlement, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Class, you should contact the Administrator for more information or to request that a copy of this Notice be sent to you in the mail.

Settlement Administrator
Name
Mailing Address
Telephone Number

If you wish to communicate directly with Class Counsel, you may contact them at the contact information noted here:

Class Counsel
Brian Mankin, Esq. <i>brian@LMLfirm.com</i> Misty Lauby, Esq. <i>misty@LMLfirm.com</i> Lauby Mankin Lauby LLP 5198 Arlington Ave, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444

You may also seek advice and guidance from your own private attorney at your own expense, if you so desire.

This Notice is only a summary. For more detailed information, you may review the Settlement Agreement, containing the complete terms of the proposed Settlement, which is on file with the Court and attached to the Declaration of Brian J. Mankin in Support of Motion for Preliminary Approval of Class Action Settlement filed on XX, 2024 and which is available to be inspected at any time during regular business hours the Office of the Clerk, San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT “C”



LAUBY, MANKIN & LAUBY LLP

February 9, 2022

Sent Via Online Filing to the LWDA

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

Sent Via U.S. Mail and Certified Mail

Transport Corporation of America, Inc.
17115 Yankee Doodle Road
Eagan, MN 55121

Eric Anson
17115 Yankee Doodle Road
Eagan, MN 55121

Melinda Green
4701 East 32nd Street
Joplin, MO 64804

Re: PAGA Civil Penalty Claim
Starla Hagon, et al. v. Transport Corporation of America, Inc., et al.

To the Labor and Workforce Development Agency, Transport Corporation of America, Inc., Mr. Anson, Ms. Green, and all affiliated entities:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Starla Hagon and Michael Jespersen (“Claimants”), on behalf of the State of California and all Aggrieved Employees, against their former employer(s), Transport Corporation of America, Inc., Eric Anson, Melinda Green, and/or any affiliated entities (the “Company”), for violations of Labor Code §§ 201, 202, 203, 204, 208, 210, 218.6, 226, 226.2, 226.3, 256, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, among other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s).

FACTUAL BACKGROUND

Claimants were employed by the Company from approximately 2014 through December 2021 as truck drivers. Claimants allege that they and all other truck drivers who resided in California and that were employed by the Company (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations Claimants were subjected during their employment.

Notably, at all relevant times, Claimants and the Aggrieved Employees were only paid on a piece-rate (per-mile) basis but did not receive separate hourly compensation at no less than the minimum wage for unpaid, on-duty, time including tasks such as pre-trip and post-trip inspections, detention time, loading and unloading time, completing paperwork, refueling or repair, and downtime between runs. Also, the piece-rate compensation paid to Claimants and the Aggrieved Employees often resulted in a payment of wages at less than the required California minimum wages for all hours worked.

Moreover, Defendants failed to compensate the Represented Employees, including Plaintiffs, for all nonproductive time separate from any piece-rate compensation at the rate required by Labor Code § 226.2.

Also, the Company required Claimants and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement, including, but not limited to, acquiring and maintaining a smart phone and related monthly data plan to communicate with the Company via phone and text message.

The Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period, including meal and rest period premiums. Additionally, the Company failed to pay Claimants and the Aggrieved Employees their final wages within the timeframe required by Labor Code §§ 201 – 203. Finally, during employment with the Company, Claimants and the Aggrieved Employees received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

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

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

PAGA ASSESSMENT FOR FAILURE TO PAY WAGES

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

During their employment, Claimants and the Aggrieved Employees were paid on a piece-rate but did not receive separate hourly compensation at no less than the minimum wage for unpaid, on-duty, time including tasks such as mandatory paid rest breaks, pre-trip and post-trip inspections, detention time, loading and unloading time, completing paperwork, refueling or repair, and downtime between runs. Additionally, the piece-rate compensation paid to Claimants and the Aggrieved Employees often resulted in a payment of wages at less than the required California minimum wages for all hours worked. Therefore, this resulted in earned, but unpaid, minimum and regular wages due and owing to Claimants and the Aggrieved Employees. Accordingly, Labor Code §§ 210, 558, 1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE SEPARATE PAYMENT FOR
NONPRODUCTIVE TIME**

(Labor Code § 226.2)

Labor Code § 226.2 requires employers that pay their employees on a piece-rate basis to provide separate payment for rest and recovery periods and other nonproductive time. Claimant and the Aggrieved Employees are and/or were employees of the Company who were paid on a piece-rate/flat-rate basis, yet the Company did not comply with the requirements of Labor Code § 226.2 for its piece-rate employees. As a

result of these violations, penalties may be assessed pursuant to Labor Code § 2699, among possibly other sections.

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

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

Labor Code § 2802(a) states “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” IWC Wage Order § 9(b) states “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.”

Here, the Company required Claimants and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties. For example, the Company required Claimants and the Aggrieved Employees to acquire and maintain a smart phone and related monthly data plan to communicate with the Company via phone and text message. Accordingly, Labor Code § 2699 imposes a penalty upon the Company for each such violation of Labor Code § 2802.

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

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

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

As a result of the Company’s failure to pay Claimants and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimants and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

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

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

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code §§ 203, 256.) Labor Code § 2699 also imposes a penalty.

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

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

Furthermore, Labor Code § 226.2(a) states “[f]or employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period: [...] (2) the itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable: (A) the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period [and] (B) [...] the total hours of other nonproductive time, [...] the rate of compensation, and the gross wages paid for that time during the pay period.”

Here, the Company violates Labor Code § 226(a) every pay period with respect to Claimants and the Aggrieved Employees because the wage statements failed to provide any information regarding hours worked, and therefore the wage statements did not state “total hours worked by the employee” in direct violation of Labor Code § 226(a)(2). Additionally, the Company failed to provide accurate itemized wage statements due to violations including: failure to accurately state the number of piece-rate units earned by the Aggrieved Employees and any applicable piece-rate; failure to accurately state gross wages earned; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; failure to state the total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period; and failure to state the total hours of other nonproductive time, [...] the rate of compensation, and the gross wages paid for that time during the pay period. Accordingly, Labor Code §§ 226.3 and 2699 impose a civil penalty and/or assessment for these violations.

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

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

ATTORNEYS' FEES, INTEREST, AND PENALTIES

(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimants seek the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimants are entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees.

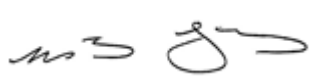
Additionally, Claimants seek attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for penalties related to the foregoing claims and remedies. If Claimants become aware of any additional claims for Labor Code violations related to their employment and/or other employees of the Company, they reserve the right to add new claims by amending this claim letter.

Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Sincerely,



By: Misty M. Lauby, Esq.

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EXHIBIT “D”